UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MASSACHUSETTS - BOSTON

IN THE MATTER OF:	Case #15-11362
DAMIAN ANKETELL	Boston, Massachusetts
	February 26, 2016
Debtor.	11:03:53 A.M.
TIM SMITH, *et al.*,	
Plaintiffs,	
v.	AP #15-01124
DAMIAN ANKETELL,	
Defendant.	
DAMIAN ANKETELL,	
Plaintiff,	
v.	AP #15-01117
TIM SMITH, *et al.*,	
Defendants.	

TRANSCRIPT OF TRIAL RE:
(15-01124:) [#41] MOTION FILED BY DEFENDANT DAMIAN ANKETELL FOR SUMMARY JUDGMENT WITH CERTIFICATE OF SERVICE (REGAN, JOHN); [#42] BRIEF/MEMORANDUM OF LAW IN SUPPORT (RE: 41 MOTION FOR

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Electronic Sound Recording Operator: Elizabeth Lombard

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SUMMARY JUDGMENT FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN); [#43] STATEMENT IN SUPPORT WITH CERTIFICATE OF SERVICE (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN); [#44] AFFIDAVIT OF JOHN REGAN IN SUPPORT (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (ATTACHMENTS: #1 EXHIBIT 1, #2 EXHIBIT 2, #3 EXHIBIT 3, #4 EXHIBIT 4, #5 EXHIBIT 5, #6 EXHIBIT 6, #7 EXHIBIT 7, #8 EXHIBIT 8, #9 EXHIBIT 9) (REGAN, JOHN); [#51] MEMORANDUM OF LAW AND FACT IN OPPOSITION TO (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY PLAINTIFFS THERESA DIPIRO, TIMOTHY SMITH; [#52] EXHIBIT (RE: 51 MEMORANDUM OF LAW AND FACT IN OPPOSITION TO 41 MOTION FOR SUMMARY JUDGMENT) FILED BY PLAINTIFFS THERESA DIPIRO, TIMOTHY SMITH; [#57] AFFIDAVIT OF JOHN REGAN IN SUPPORT (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (ATTACHMENTS: #1 EXHIBIT A, #2 EXHIBIT B) (REGAN, JOHN); TRIAL DAY 1: [#1] VERIFIED COMPLAINT BY TIMOTHY SMITH, THERESA DIPIRO AGAINST DAMIAN ANKETELL; NATURE OF SUIT (62 (DISCHARGEABILITY - 523(a)(2), FALSE PRETENSES, FALSE REPRESENTATION, ACTUAL FRAUD)), (68 (DISCHARGEABILITY - 523(a)(6), WILLFUL AND MALICIOUS INJURY)), (14 (RECOVERY OF MONEY/PROPERTY - OTHER)) DIPIRO, THERESA AND SMITH, TIMOTHY PRO-SE PLAINTIFFS (REGAN, JOHN, COUNSEL FOR DEFENDANT); [#58] JOINT PRE-TRIAL STATEMENT WITH CERTIFICATE OF SERVICE FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN); (15-01117:) TRIAL DAY 1: [#1] COMPLAINT BY DAMIAN ANKETELL AGAINST TIMOTHY SMITH, THERESA DIPIRO; NATURE OF SUIT (91 (DECLARATORY JUDGMENT), (02 (OTHER (e.g., OTHER ACTIONS

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THAT WOULD HAVE BEEN BROUGHT IN STATE COURT IF UNRELATED TO BANKRUPTCY)) (REGAN, JOHN, COUNSEL FOR PLAINTIFF, DIPIRO, THERESA AND SMITH, TIMOTHY, PRO-SE DEFENDANTS) BEFORE THE HONORABLE JUDGE FRANK J. BAILEY, J.U.S.B.C.

APPEARANCES:

For Debtor/Plaintiff/ Defendant Damian Anketell:	JOHN J. REGAN, ESQ. Dolan and Regan 10 Chestnut Street Peabody, Massachusetts 01960
For Plaintiff/Defendant Tim Smith:	TIM SMITH, *Pro Se* 53 Marlboro Street Newburyport, Massachusetts 01950
For Plaintiff/Defendant Theresa DiPiro:	THERESA DiPIRO, *Pro Se* 53 Marlboro Street Newburyport, Massachusetts 01950

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Plaintiffs' Witnesses:				
THERESA DIPIRO				
By the Court	14			
DAMIAN ANKETELL				
By Mr. Smith	39			
Defendant's Witnesses:				
DAMIAN ANKETELL				
By Mr. Regan	70			
By Ms. DiPiro		86		
THERESA DIPIRO				
By the Court	112			
By Mr. Regan		117		
TIMOTHY SMITH				
By the Court	119			
By Mr. Regan		120		

EXHIBITS		Ident.	Evid.
Plaintiff's Exhibits:			
Q	Screenshot of Text Message	95	95
Defendant's Exhibits:			
BB	FIA Credit Card Company Letter	112	115
CC	FIA Credit Card Company Letter	116	116
dd	FIA Credit Card Company Letter	116	117

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(At 11:03:53 a.m.)

THE CLERK: This is Adversary Proceeding 15-1117, Anketell v. Smith, *et. al.*, Adversary Proceeding 15-1124, Smith, *et. al.* v. Anketell. This is day two of trial.

Will the parties please state their names for the record?

MR. SMITH: Timothy Smith, *pro se* plaintiff.

MS. DIPIRO: Theresa DiPiro, *pro se* plaintiff.

MR. REGAN: Good morning, Your Honor. John Regan representing Mr. Anketell, who is here.

THE COURT: Very good. Good morning everyone.

ALL PARTIES: Good morning.

THE COURT: All right. So we're ready to resume. Anything to talk about? No. All right. So, yes?

MR. SMITH: Actually, there is one thing that we'll get to. Maybe we should get to it now.

THE COURT: Um-hum.

MR. SMITH: There's a piece -- there's an exhibit that we received last Friday that's almost identical to one we've already admitted. It's a bank statement, but it's one we only had a week to review. And in reviewing it, it was slightly different than the one we put into the binder. So we actually made copies --

THE COURT: Oh.

MR. SMITH: -- of that. It's the same -- same statement but there's some writing on it that we hadn't seen before.

THE COURT: All right. Well, let's see. So this is a proposed exhibit.

MR. SMITH: It is.

THE COURT: It's not something that's been admitted in --

MR. SMITH: That's correct.

THE COURT: -- into evidence already, is that right?

MR. SMITH: That's correct.

THE COURT: All right. You can substitute that in into the binder.

MR. SMITH: Okay.

THE COURT: And then use it in the way you --

MR. SMITH: In place of --

THE COURT: -- normally would. I mean --

MR. SMITH: Okay.

THE COURT: -- but it's not in evidence yet, so you're going to have to go through that process to --

MR. SMITH: Right.

THE COURT: -- get it admitted. But yeah, you can -- you can add it. Well, any objection to that?

MR. REGAN: I'd like to see it, please.

THE COURT: Yeah. Yeah.

MR. REGAN: So I know exactly what --

THE COURT: Yeah, oh, that's fair enough.

MR. REGAN: -- you're talking about.

THE COURT: Yeah.

(Pause)

Any objection to substituting that as a proposed exhibit?

MR. REGAN: No, Your Honor.

THE COURT: Okay. So --

MR. SMITH: I have copies for --

THE COURT: That's fine. What number is it now?

MR. SMITH: So the original --

MS. DIPIRO: It's part of Exhibit B and it's pages 1 through 5 -- actually, 1 through 4. Pages 1 through 4.

MR. SMITH: 1 through 4, Your Honor.

THE COURT: So that's fine. I'm going to take out Exhibit B, pages 1 through 4, and I'm going to hand those to you. And I'll take whatever you want to substitute in as the new proposed Exhibit B.

MR. SMITH: Should I approach?

THE COURT: So 1 through 4, 4 includes -- is a list of checks, right?

MR. SMITH: Right.

THE COURT: Okay. Just --

MR. SMITH: That's basically the same.

THE COURT: All right. That's the same?

MR. SMITH: That's basically the same but it's -- it's the document was four pages so we're just going to substitute the whole thing just for --

THE COURT: All right.

MS. DIPIRO: Well, it's actually five pages.

THE COURT: All right. You can approach.

MR. SMITH: Just appeals some things.

THE COURT: You can give that to Mr. Smith, Mary.

No, it's not hole-punched, number one. Then number two, do you have a set -- you have a set for the clerks?

MR. SMITH: We do.

(Pause)

THE COURT: A third point, another point about exhibits, we noticed that your proposed exhibit now that -- what was admitted as the photographs was not in my binder, okay? It wasn't there.

MR. SMITH: Okay.

THE COURT: And so I don't know if these binders are reliable --

MR. SMITH: Right.

THE COURT: -- if all the pieces are there. It's very important that this one be right because this will end up being the official exhibits to the trial. I don't know. Did I take the photos out of that one? We just switched binders. So you're going to want to make sure you get me a set for your official set --

MR. SMITH: Right.

THE COURT: -- here --

MR. SMITH: I understand.

THE COURT: -- of it. Okay.

MR. SMITH: Thank you.

THE COURT: And at the end, what you always need to do is to -- everyone, counsel, you guys, you need to sit down with Mary and make sure that what she believes is in, is in; and if it isn't admitted, we're going to give back to you out of this binder.

MR. SMITH: Okay.

THE COURT: Okay? Because we don't have any interest in it if it's not admitted into evidence, okay?

MR. SMITH: I understand. Thank you.

THE COURT: Okay. All right. So you were on the stand.

MR. SMITH: Right. Go ahead.

MS. DIPIRO: I have it.

(Pause)

I have an extra evidence binder.

MR. REGAN: That's the one I was using, if I recall correctly.

MS. DIPIRO: You had one --

MR. REGAN: Yeah, I had the green one. Thanks.

THE COURT: So good morning, Mr. Smith.

THE WITNESS: Good morning.

THE COURT: I want to remind you that you're under oath still from yesterday. You understand that, right?

THE WITNESS: I do.

THE COURT: Okay. All right. So you were in -- starting your direct testimony. Feel free to proceed.

THE WITNESS: Oh, I think we left at that Attorney Regan was going to talk to me --

THE COURT: Okay. Hold on. Had we finished your direct testimony?

THE WITNESS: I think so. I think we left it -- no, we hadn't finished yet but you were allowing him to come and --

THE COURT: Oh, I'm sorry. There was a proposed exhibit and that exhibit was the statement.

THE WITNESS: Right. And that was letter --

MS. DIPIRO: Yes, it was Exhibit -- sorry. Give me a second.

MR. REGAN: Your Honor, I believe it was Exhibit Y.

THE COURT: Y?

MS. DIPIRO: Correct. It was.

THE COURT: Okay.

THE WITNESS: Thank you. Yes, that's it.

THE COURT: All right. I should have had you get me exhibit dividers over the night because this just slows everything down. That's why my pretrial order says separately tabbed.

THE WITNESS: Well, I'm sorry. I have --

THE COURT: No, because it's not save any time because whoever's in that box is going to have the same problem.

THE WITNESS: Okay.

THE COURT: X, Y. Every detail matters honestly when you're trying a case. All right. All right. I'm up to that. Okay. So where I recall -- to refocus us, where I recall we were was that there was an objection. This was offered into evidence. It was -- I had an objection to it as hearsay, I believe, and/or a -- I had an objection. I then referred to Federal Rule of Evidence 405, which allows the use of specific instances of conduct and I concluded that under 405(b) it was admissible pending the establishment of sufficient -- a sufficient factual basis for it.

You made an undertaking to me concerning the circumstances under which this was made. It was made at or about the time of the events. It hasn't been altered except in ways that you have described and you had knowledge or recollection of the events at the time you made the writing.

So I concluded that it appeared that there was a sufficient fact -- evidentiary basis to admit it subject to Mr. Regan's opportunity to examine Y. So that refocuses us on where we were. Okay, Mr. Regan. Go right ahead.

MR. REGAN: Your Honor, before we examine Mr. Smith on this question, I'd like to point out that in addition to the hearsay objection regarding the document as a whole, the document also presents unremedied hearsay even if the document otherwise qualified. Just about the last paragraph relates what Mr. Smith says Kenny says and that presumably is offered for the truth of its contents. There's also various other descriptions of what the framing guy said, the architect said. I don't know that those are significantly offered for the truth of their content. But the reference to Kenny's statement, I don't think it's remedied even if you view this as a past recollection recorded.

THE COURT: Right. So those are two different things and the -- from the standpoint of the -- from the hearsay objection standpoint, hearsay exception 803.1 deals with present sense impression, a statement describing or explaining an event made while -- while or immediately after the declarant received it is not -- is excepted from the hearsay bar. And the evidentiary basis that -- the foundation that this witness has laid for this document is that he made it at or about the time when these facts were sufficient in his mind and I think that falls within that exception.

MR. REGAN: The document as a whole. But if I may direct your attention, Your Honor, to the last paragraph in which he says Kenny says something and that is offered for the truth of what Kenny supposedly said, that remains hearsay and that is not cured by the past recollection recorded exception.

(Pause)

THE COURT: All right. So it's a totem pole hearsay issue?

MR. REGAN: I would say so, Your Honor.

(Examination of Mr. Smith, previously sworn, continues.)

EXAMINATION

BY THE COURT:

Q. All right. I mean I could ask you, Mr. Smith, whether you have any response to that but I don't know if you do.

A. I guess I would be unclear about "totem pole." I mean I can --

Q. Totem pole just means that there's more -- there's more than one level of hearsay. It means that what has been -- the first argument is that the entire document is an out-of-court statement --

A. Right.

Q. -- offered to prove the truth of the matter asserted. I have already found that most of this at least is subject to an exception, 803.1. I know this is technical. "Totem pole" merely is a shorthand way of saying that there's hearsay within hearsay --

A. Right.

Q. -- and so the -- and what counsel is pointing out is that Mr. Kenny, at some point here at the last couple of sentences, you recount what Kenny -- Kenny told you. So you would normally have to establish an exception for that, as well.

A. I understand. I'm in no position to offer an exception. To move forward, I'll be discussing Kenny's conversation later in my testimony?

Q. Probably not. You understand you can't -- you can try.

A. I'll try.

Q. It's the same problem.

A. Right.

Q. It's a hearsay problem. For you to tell us -- well, who's Kenny?

A. So Kenny was the original construction supervisor on the job. He was --

Q. Working for whom?

A. Working for Ground Up.

Q. Okay. So that, I think, solves it.

A. At the time he was.

THE COURT: It's not hearsay. It's not hearsay. What Kenny says is subject to 803 -- 801 then. 801 says that statements of a party opponent or an agent on behalf of a party opponent is not hearsay. Kenny is apparently an agent of Mister -- of the debtor.

MR. REGAN: Your Honor, I would just point out Ground Up is not the party here. This is an action personally against Mr. Anketell.

THE COURT: I'm aware of that. They've --

MR. REGAN: And I would suggest that the agency matter, I would argue, is not effected in this regard.

THE COURT: Okay. And I'll overrule that and I'll overrule it for the following reason: that there is a claim of to pierce the corporate veil here. There is already evidence that Mr. Anketell ran the -- these other entities without any distinction between himself and those entities.

In addition, they're both agents. He might be an agent as well of Ground Up, Mr. Anketell himself. And under the circumstances where there hasn't been any evidence of capitalization or anything else with respect to these entities, all of which are in bankruptcy at this point, I'll make the -- I'll make the determination that Kenny was an agent of the debtor, okay? So do you want to inquire of this witness concerning this document before I make a determination as to its admissibility?

MR. REGAN: No, Your Honor.

THE COURT: All right.

MR. REGAN: Thank you, Your Honor.

THE COURT: So I will admit this statement -- well, I can't do that. Under the rule you can read it to us.

THE WITNESS: Right.

THE COURT: Now let me ask this. To save time, Mr. Regan, do you -- do you object to me striking everything in this exhibit from -- on page 1 from the -- the words "construction contract and dealings" up, which the witness has admitted he added recently, and from the words "the foregoing is a true" -- "is true to the best of my knowledge and belief" down and the jurat, if I strike those, then the witness has testified that that's the statement he recorded at the time. You have the ability to put that in evidence or he can read it in and then it's in evidence, but we're all going to have to sit here and listen to -- to him do it for, you know, for the next 15 minutes. It's up to you.

MR. REGAN: Your Honor, I object. I maintain my objection to the documents as a whole and therefore I would also not accept its entry as a document. If there's any other way by which you find it acceptable for Mr. Smith to offer this --

THE COURT: Well, it's not --

MR. REGAN: -- that's your ruling.

THE COURT: It's not a matter of me. If you have an argument under 405, this is a great time to make it.

MR. REGAN: Well, let me just see what we have in here. I'll ask a few questions if I may?

THE COURT: Okay.

MR. REGAN: Thank you.

THE COURT: I thought you just said you didn't object to its -- to its admission?

MR. REGAN: Well, I do object to its admission.

THE COURT: Now, you object to its admission as a document.

MR. REGAN: I do that.

THE COURT: Do you object to his reading it in the record?

MR. REGAN: Insofar as it is -- it contains what I still believe is hearsay --

THE COURT: That's overruled.

MR. REGAN: I understand that.

THE COURT: Anything else?

MR. REGAN: Anything else? No, Your Honor.

THE COURT: Okay. Then if you decide not to allow it to be put in the record as a document, he'll read it into the record. That's all I'm saying.

MR. REGAN: I understand that, Your Honor.

THE COURT: All right. Let's have him go ahead and read it.

BY THE COURT:

Q. Okay. Say it again.

A. Okay. So I'll start from the post-summary section.

Q. All right. So the clerk has asked me what's the number of this exhibit. It is not a numbered exhibit. This is your testimony and so from the words -- well, let me ask you. "Construction contract and dealings," that sentence? That's from the old?

A. That is from the old.

Q. That was recorded --

A. That was my heading.

Q. -- at or about the time that the events occur, right?

A. That's correct.

Q. From there until where you put "sworn under the pains and penalties". All right. Go ahead.

A. Okay. Here we go.

"Construction contract and dealings with Ground Up Construction and Damian Anketell. My wife and I came by Damian via his call to us after we had placed a job request on HomeAdvisor. We had had two other contractors look at the job recently and three others look at it approximately eight months ago. The job is rather large, finishing and dormering two side facing roof lines. At the initial meeting, me, my wife and Damian talked about what we were looking for and walked through the potential job site. We found Damian to be very thorough and compressive in his appraisal of the work required. He very clearly evaluated the requirements and explained some of the larger issues, specifically the potential problems that the large eight-tract unit would present. We scheduled a second meeting with Damian due to the aforementioned comprehensive evaluation. One of the contractors was rigid and unwavering in his belief that the stairs could not be adjusted to code the way we envisioned and that the chimney should not be demo'ed. We were comfortable with the other contractor but had a feeling Damian would be more efficient due to his proclaimed experience with total tear-downs and renovations in his work as a house flipper.

"Additionally, the other contractor did not provide a timely estimate and was away on the weekends whenever we tried to communicate. We took comfort in the fact that all estimated were within 5K, if not less of each other.

"On the second meeting with Damian, he brought his HVAC guy (indiscernible), an architect, David Jaquith, and his foreman, Ken. We walked through the house and heard comments from the various participants. The HVAC guy explained the work required would be more extensive as there were actual pieces missing from the HVAC unit and there are also some setback issues. Damian apologized for missing these. We stated this was no problem as he is not an HVAC guy and did, in fact, recognize the potential for this to be a large issue. The foreman was largely quiet, speaking only when engaged.

"The architect had suggestions and ideas, such as making a master bedroom on the third level, which Damian did not endorse due to the security issue of us being on the third floor while the children would be on the second floor. We valued his input. The HVAC guy continued looking through the unit ad the ducts saying they were not ideal and very possibly not up to code, much as Damian had said on the initial consult. As knocking down the chimney would necessitate us installing a new vent pipe, we all went downstairs to inspect the downstairs HVAC situation. Nothing went too bad down there. Back on the first floor, Damian and HVAC suggested another heat vent near the back of the kitchen. A good idea as it is cold there during the winter. We left it that we would consider things and get back to Damian to discuss the next step, which we did. He seemed to want to meet as soon as possible, which seemed fine as he told me during the third meeting that he had seven to eight jobs lined up and needed to model his schedule. I was surprised at the volume of work and asked if this was normal. He said had been expanding rapidly, too rapidly in fact, and that he had done 2.5 million worth of business last year stretching him thin, evaluating the risk of such rapid growth. We spoke for a while about work history experience and other such things, eventually signing the contract.

"Looking back, the contract was essentially the same thing as the estimate. Only one contract was signed and neither I nor Theresa was given another copy to sign. No mention of a three-day right to cancel was made nor was there a page with details of the three-day right outlined."

"As of today, 27 October" -- okay -- "my wife and I" -- okay. "As of today, 27 October, we have not received a signed copy of the contract. Following the signing of the contract" --

Q. Where do you see that?

A. Is it -- let me pause here for a second.

Q. I don't see --

A. It does a -- what I've done is gone to page 4. I apologize. When this was saved, I believe there were two pieces that were saved together so I've gone to page 4 under the second paragraph, which picks up where I left off. So I wrote, "three-day right outlined" and then I have "as of today, 27 October" that's on page 4 of 6.

Q. Where?

A. On page 4 on the top paragraph towards the end. It's four lines down. It says, "As of today, 27 October, we have not received a signed copy of the contract."

Q. I see the words.

A. Okay. That's where -- this was a rough document that was saved sloppily so that's where I left off before I realized just now that the prior page was actually redundancy.

Q. Okay.

A. So I can pick up right there. I'll start where I left off.

"As of today, 27 October, we have not received a signed copy of the contract. Following the signing of the contract, we received approximately three calls, two from Damian, one from his mom who works as his admin, in four days or so asking for the funds. From our conversations, the initial deposit 40K, approximately 40 percent of the job, was to obtain materials and hire vendors. We wired the funds on Friday, October 10th. We called on this day, the 10th, several times to confirm the funds had been received.

"Unbeknownst to us, Damian was scheduled to have major surgery this day. He did send an email to Theresa early Monday. The grammar and tone was a bit off on the email. I did not know about the email and sent a text. This was not answered and as Damian had been very prompt in responding in the past, I was concerned. I began to look into his background a little deeper and could not find any positive reviews nor could I find any negative reviews. What I did come across were ads he was involved in for his house-flipping activities. These were of the cash-for-your-house-now variety and were a bit unsettling, especially considering that there was very little other information.

"I should mention that I found -- my wife had come across positive reviews on HomeAdvisor for Damian, which was not the case. There were no negative reviews either. After discussing this and being unable to contact Damian on the 13th and we began to panic a bit my thought was that perhaps we had just paid for this man's surgery. As such, we managed to contact Damian's foreman, Kenny, via a post on the Ground Up Facebook page. We -- I believe I was the only one on the phone -- expressed out concerns about not hearing from Damian and Kenny and Kenny said he understood. During this conversation, he also expressed disappointment that the framer was not at the meeting that he attended with the HVAC guy and the architect. I had thought Kenny was the framer and was concerned as well, as the framer would be the actual guy building the addition and should probably have looked at the house.

"To establish the professional stability of Damian, I began to numerous questions of Kenny: Was Damian married? Did he have kids? Had he ever been late paying him? To which he said yes, but only in the early stages of the company, which was only several years ago. The fact that Kenny could not reach Damian was unsettling, though Kenny did know that Damian had undergone surgery. I expressed my concern that Damian should have told us this and he agreed. I also asked Kenny if he had worked on large 100k-plus jobs with Damian or was it just kitchens and decks? Kenny said that he had not worked on such large jobs.

"Theresa and I did not sleep well on Monday as Damian had said that this was not a large job for him. We were able to speak to Damian on the 14th. He sounded tired and as one might expect to sound after having major surgery the prior Friday."

And that's it, Your Honor. The next page is again -- it's a dupe of the -- the first -- the prior page. In other words, when I was saving the document, I would save over and create additional pages.

Q. All right. When did you say you made this document?

A. I started it, I believe -- now looking back, I think these dates are wrong when I said the 13th is that I believe we paid Damian on the 17th. So I believe I started it --

Q. But just answer my question.

A. Okay.

Q. When did you make this document?

A. I believe I started it on, I would say, the 20th but

I completed it, my thoughts, on the 27th.
Q. Of what?
A. Of October.
Q. So these dates you're referring to, the 13th, the 14th, the 10th, those are all in October?
A. Those are in October.
Q. Prior to you starting this on the 20th?
A. Yeah, so those are incorrect when I look back. I put the wrong dates in. The money was sent on the 17th, I believe.
Q. Okay. All right. You've read it. Anything else you want to tell me on direct examination?
A. Is it possible we can revisit my last statements before we cut off?
Q. You can do anything you want. Well, I don't know what you mean by that, but --
A. Well, I --
Q. -- you can testify. So what statements?
A. Can I ask --
Q. Just testify.
A. -- can I ask the --
Q. Tell me what you want --
A. -- reporter to read back my last --
Q. Nope. We don't do that.
A. No. Okay. Well, then I'll -- I'll just go forward then and I'll possibly repeat myself. I'm just not sure what

it was.

Q. Oh, I see. Yeah, I don't --

A. Okay.

Q. -- you're going to have to rely --

A. That's --

Q. -- on your memory and --

A. All right. So going forward I wanted to say that contradicting what Damian said, he did tell me that he had major surgery planned on the day that the money hit, not prior to the contract and we didn't know about that. So that's why we were -- we were a bit upset that we couldn't reach him. He told us after the fact that that was due to surgery and that his wife had taken his phone away because of all the texts and messages he gets and she didn't want him upset or anxious or doing anything like that.

And then now what I'd like to talk about is the conversation that I had with Kenny Lefrenswa on Monday after, as far as I knew, that we hadn't been able to reach Damian. So we had see, his number, like I said, in -- in a Facebook posting and we were incredibly anxious, you know. This is -- I think this is about 9:00 o'clock. We didn't know what to do. We realized we had that number so I called Kenny and --

Q. What day was this?

A. I believe it was Monday, the 20th --

Q. All right.

A. -- of October.
Q. For reference, when did you sign the contract?
A. The 13th of October.
Q. All right. So about a week later.
A. About a week later.
Q. All right.
A. Right.
Q. Go ahead.
A. So I would describe it as it started off as some simple questions and I think he was on the defensive because of the timing involved. It was 9:00 o'clock on a Monday. I would say my attitude was a bit adversarial. I wanted to -- I had some serious questions about where our money went, why I couldn't reach him. And after speaking to Kenny, I think I was even more disturbed basically by Kenny not coming to, you know -- saying, "It's okay. It's fine. These things happen." There was no comfort in Kenny. He was kind of -- he was kind of upset he couldn't reach Damian as well. In the meantime, I found out that he did send an email to Theresa but he still -- I still couldn't reach him.
Q. Who? Who had sent an email to Theresa?
A. Damian had sent an email Theresa -- to Theresa on Monday unbeknownst to me. So I believe he -- he wouldn't -- I don't think he answered calls that day though. Just the email came out so we still had questions, but I believe he confirmed

the receipt of the money that day. And I think of importance is, you know, we talked earlier -- my wife talked earlier about never requesting the money back from the contract and she didn't know that I had either and, in fact, I did. I was in my office -- my then office at the time, my smaller office, my small conference room, and I was speaking to Damian. And I called him soon after this and I -- I just said, "We have major doubts about this project and your ability to complete it going forward" and he said, "We can do this project." He was very assertive. "We can do this." I said, "You know what? I just, I don't feel good about it. It's not working. We want our money back. We just -- we just can't, you know -- it's been too much. We want our money back." And it was at that time that he told me he had purchased some materials and that we were in a contract together. And we talked a little bit more, probably 15 minutes more, and I recall it well. And I said -- I remember saying that, you know, there's one Damian Anketell in the world as far as I know, so, you know, there's nowhere -- nowhere to hide from accountability if these things go wrong. And then he said he could -- he knows he can do the job and I said, "Okay."

And from there I think we agreed to go forward because I was -- frankly, didn't want to get involved in a contract dispute then. And that's how we left -- that's how we left that. After that, we moved forward as specified earlier.

And now something else I think is -- is worth mentioning in is --

Q. That phone call, when do you think that was?

A. This was the -- I would say -- I would say on or about the 23rd, which is three days, if not two days -- maybe the 22nd. Very soon after speaking to Kenny Lefrenswa because we were -- we were very -- just not feeling comfortable with anything that was happening.

Q. And you say in that call Damian told you what, that he had bought materials?

A. He told me that he had bought materials and that we were in a contract together and that -- that leaving would violate the terms of the contract, that -- that if I stop the job that would violate the terms of the contract. That’s what I recollect. And I said, I, you know, do I really want to get involved in -- in an issue? I’ll give him a chance to prove himself and get things going.

Q. All right. What next?

A. Okay. So the next thing I’d like to do is -- is go to Exhibit A, the contract, if we could.

Q. You can.

A. And first I’d like to admit that into evidence. I don’t believe it was admitted.

Q. It’s in. It’s in by agreement.

A. By agreement. Good. Okay. Thank you.

Q. So that's in evidence.

THE COURT: Right, Mary? You have that, A? Okay. So that's in evidence.

THE WITNESS: In evidence. And I wanted to go through some of the costs that are outlined under the construction section, which is darkened. There's construction and under that is decking, electrical, flooring and framing and I'd like to point out that the framing costs are $31,000. That's a total of $31,000. And actually above that is demolition, which equals 2,542. And then there are miscellaneous prep charges, architect, things of that nature. I'm not sure that's -- planning, I'm sorry. Planning comes at the end and that's $2,025.

So I'm looking at these costs and I want to keep in mind, too, that we -- we dispute that framing was even completed. So that's -- that's in dispute but I'm going to -- if we add these numbers up we come to, let's see, somewhere around $35,000.

BY THE COURT:

Q. What numbers?

A. If we add up the planning costs, the demo costs and the framing costs and we agree the demolition and planning was complete, we don't agree on the framing costs but I'm going to include that in this calculation just to show the amount of costs that would -- the amount of the proposed work, the dollar value and that comes to approximately, like I said, $35,500 or so. And now a portion of that I imagine would be profit, so I don't know what the profit margin's on that but we'll -- we can skip that. Just look at that as pure costs. And then if we go to the spreadsheet introduced by Damian as his costs for the project, which is, I'm sorry, Exhibit --

MS. DIPIRO: J.

THE WITNESS: I'm sorry. Exhibit J. So if we go to Exhibit J, we see that -- let me see here. We see total payments minus expenses of $519. So our question is, is if we paid -- technically we paid $78,000 and I -- and I say that because over and over we've been told that $16,000 was returned to us, which is true -- 17 was returned to us but not by Mr. Anketell. So in effect, Mr. Anketell was paid $78,000. So for purposes of this conversation, I'd like to just not talk about the money returned because it did not come back from Mr. Anketell.

BY THE COURT:

Q. So your testimony is that he got the $16,000 --

A. No, it does not.

Q. Okay.

A. But we paid him that money. Where -- its whereabouts I believe are still unknown. I don't know what's -- it's unaccounted for. That's --

Q. All right. So you don't have any information that he got it, though?

A. Well, we -- we did pay him that 16 -- we certainly did pay him that $17,000.

Q. But it was returned to you?

A. But it was returned by Card Services, not by Damian Anketell. That's why he has a claim against him from PayPal because he -- that money is -- is gone. I don't --

Q. I see. All right.

A. So in effect, we did pay him $78,000. We were returned 17 but not from Mr. Anketell. That's the basis for the entire stay claim.

Q. I know what it is, but that -- but you have no loss related to that 16 --

A. We do not. I'm not claiming that we have a loss, no, but I'm --

Q. All right.

A. -- saying that we did pay him that money.

Q. Okay. Go ahead.

A. And yet, he is -- he is claiming that the difference between total payments and expenses is only $519.

Q. Right.

A. So our question is, where did the other money go if our -- if the costs per the contract were $35,000, where is the rest of the money. Where? How was it possibly spent? And that's -- that's the question that we have.

Q. All right. What I take from this is your testimony is that your view is that you received $35,000 in value from the work he did?

A. I wouldn't agree to that only because framing was not complete. I'm using the framing as even an illustration to -- to give him the benefit of the doubt just in this one particular instance. Framing was not complete. We had to pay extra money to have that completed. But should he even be correct -- should that be proven somehow, which I don't believe it can be, the framing was complete, he would still have not come close to expending the amount that he claims as far as the total payments minus expenses.

Q. All right. You understand the burden is on you to establish these facts?

A. Well, I mean we've established that we've paid $78,000 I think and -- and that per terms of the contract this is what it should have cost him. These are his costs that he says to complete the work that he claims he completed. So it just appears that there's quite a disconnect between the costs, the claim costs of what was actually completed and the -- the amount that we paid.

Q. Okay.

A. And So I -- that was a bit confusing. I apologize but I thought that was very important to bring up. And further -- may I ask a question that's --

Q. Probably not.
A. Okay. Fair enough. I think --
Q. It's hard for me to answer questions if that's what -- you want to ask me a question about law or facts, I really have a problem, you know.
A. Okay.
Q. So --
A. I understand. I think that's the extent of -- let's see.
Q. Do you want to ask me a question about process?
A. Well, it was about a ruling you made. I'm not sure if it was a ruling or not.
Q. Well, that's fair. What do you want to know?
A. Well, we mentioned "piercing the corporate veil."
Q. Ah, yes. Okay. You want to know what?
A. Well, was that a ruling that you made just then that we had pierced the corporate --
Q. It was not.
A. Okay.
Q. It's an allegation. It's your allegation. It's something that you -- you assert and I said there is some evidence of that already.
A. Okay.
Q. I didn't say that I'm in a position to rule on it.
A. Okay. Thank you. Okay. Just take one second to go

through these notes. I'm still here. Okay. That's all I --

Q. That's all you have?

A. I'm through.

THE COURT: Okay. Cross?

MR. REGAN: No questions, Your Honor.

THE COURT: Okay. You may go back to counsel table.

(Witness excused.)

All right. So do you have any other witnesses to call?

MS. DIPIRO: Besides -- I mean could -- oh, we can't go up again you're saying, right, while -- like Tim, Tim can't go up or I can't go up. No, that's it. Thank you.

THE COURT: Yeah. You can't go up --

MS. DIPIRO: I got it.

THE COURT: -- at least this stage, you know --

MS. DIPIRO: Okay. Okay. Then that's it.

THE COURT: So you've given me all the testimony -- I asked you to tell me everything you wanted to tell me and I assume you've done that. So my question is you've got any other -- I don't see anybody --

MS. DIPIRO: No.

THE COURT: -- else here.

MS. DIPIRO: There's no other witnesses. Thanks.

THE COURT: So you're resting your case then. You understand what I mean by that? You're finished --

MS. DIPIRO: Yes.

THE COURT: -- you're finished --

MS. DIPIRO: Yes.

THE COURT: -- with your --

MS. DIPIRO: Yes.

THE COURT: -- case. Okay. Let's see. You asked Mr. Anketell everything you wanted to ask him, right? We ended that. Just trying to remember what happened.

MS. DIPIRO: Yes, he was on the -- he was -- it was ended, yes.

THE COURT: You were done?

MR. SMITH: But we'd love to speak to him again.

THE COURT: Well --

MS. DIPIRO: If you're asking.

MR. SMITH: If you're asking.

THE COURT: No, well, wait. So you had asked him every question you had?

MR. SMITH: Well, and it's going -- in the time some others occurred to us but --

THE COURT: I see. Yeah, that's what happens when you wait overnight.

MR. SMITH: Yeah.

THE COURT: But here's the issue. Okay. Well, you're going to -- you want to have a chance to ask him questions after Mr. Regan --

MR. SMITH: We'd like to cross.

THE COURT: You're going to have that opportunity.

MR. SMITH: Okay.

THE COURT: But you're going to be limited by what Mr. Regan asks him. You understand that?

MS. DIPIRO: I do now.

THE COURT: You do?

MS. DIPIRO: I do now, yeah.

THE COURT: Yeah. It's a --

MS. DIPIRO: Yeah.

THE COURT: It's a narrowing funnel --

MS. DIPIRO: Yes. Yes.

THE COURT: -- in federal court so --

MS. DIPIRO: Yes.

THE COURT: Well, do you have new things that you want to ask him about?

MS. DIPIRO: Yes, we do.

THE COURT: All right. Do you wish to recall him?

MR. SMITH: We do.

THE COURT: I'll allow it, okay? They have more direct. I'm going to let them do it in their case.

MR. REGAN: Please note my objection, Your Honor.

THE COURT: There's no reason in federal court to do that.

MR. REGAN: Very well. I --

THE COURT: In other words, your objection is preserved. So --

MR. REGAN: Although my -- I'm just letting my ignorance show, Your Honor.

THE COURT: Okay. So come on up. Mr. Anketell, you understand that you're still under oath from yesterday?

MR. ANKETELL: Yes, Your Honor.

THE COURT: Thank you.

DAMIAN ANKETELL (Previously Sworn)

DIRECT EXAMINATION

BY MR. SMITH:

Q. Thanks. If you could turn to Exhibit A -- I'm sorry. Make that Exhibit X, please. Are you on it?

A. I'm there now.

Q. Do you recognize that document?

A. Yes.

Q. Can you describe it for me, please?

A. It is the building permit for the construction done on your home.

Q. Thank you. Can you tell me the name that appears after the word "Contractor" under the date?

A. Chris LeBlanc.

Q. Can you tell me why Chris LeBlanc's name is on that document?

A. He is the contractor.

Q. He was the contractor. So what was your capacity on the job?

A. I was the home improvement contractor.

Q. The home improvement contractor?

A. Owner of Ground Up Construction.

Q. Did Chris know that you put his name on this document?

A. I don't know what Chris knew.

Q. Did you ask Chris before you put his name on this document?

A. Not specifically, no.

Q. Did you ask him whether you put --

A. No.

MR. REGAN: Your Honor, may I --

THE COURT: Hold it.

MR. REGAN: Object on relevance.

THE COURT: Relevance? Overruled on relevance.
Go ahead.

BY MR. SMITH:

Q. Why did you not put your own name on this, your own construction?

A. Chris LeBlanc and I were partners in the corporation. Chris was acting as construction supervisor and contractor for the company. He used my HIC and Ground Up Construction used his construction supervisor's license.

Q. Do you have documents of this partnership?
A. The only documents I have is the fact that he is on the banking account.
Q. Was he a partner or was he a stakeholder, an equity owner in the company?
A. He -- me and him have an arrangement to be partners.
Q. Was there a corporation resolution filed for this -- for this company? Do you know what a corporate resolution is?
A. I -- I do not know.
Q. This is a corporation, correct? Ground Up is a corporation?
A. It is.
Q. So to your knowledge, Chris LeBlanc did not know this was -- his name was put on this document, is that correct?
A. He did know.
Q. He did know?
A. Yeah.
Q. How did he know?
A. I believe the building inspector called him to pick up the permit.
Q. Okay. So the only way he found out was that the building inspector called -- called Chris. Is that correct?
A. I don't know what was in Chris's mind.
Q. Did you tell Chris that you put his name on the -- on the document?

A. Chris and I had an arrangement where he was the construction supervisor --

Q. Did you tell Chris you put him name on the document?

THE COURT: Let him finish his answers, all right?

MR. SMITH: Okay.

THE COURT: You cut him off.

THE WITNESS: Chris LeBlanc and I had an arrangement where he was the construction supervisor on the project where his HI -- where his construction supervisor's license was used on all our projects that we were going to go forward with and I -- my HIC or Ground Up Construction's HIC would be used in conjunction with each other.

BY MR. SMITH:

Q. Thank you. Okay. Next question regarding something we talked about yesterday. There was a check from Max Schwartz and that is Exhibit B. Page 9 of Exhibit B.

A. I'm there.

Q. Okay. Can you -- on the top right there's a check made out to what appears to be a Max Schwartz from Ground Up Construction.

A. Yep.

Q. Is that your name that's your signature on the check?

A. It's my name, yes.

Q. Could you read what the note says on it?

A. No, I can't.

Q. Okay. Can you recall what the note might have been?
A. No, I don't.
Q. Can you describe -- tell us who Max Schwartz is.
A. I believe Max Schwartz is represented in an insulation company.
Q. Do you know the name of the company?
A. I believe it was Green Lagoon (phonetic). I'm not sure.
Q. Okay. And he worked on some jobs for you for Ground Up Construction?
MR. REGAN: Your Honor?
THE COURT: Yes? I'm sorry.
MR. REGAN: I'd like to object because we're getting redundant now. This particular check was specifically discussed in the direct exam of Mr. Anketell yesterday. It's a -- we're being repetitious and redundant.
THE COURT: All right. I'll keep a close eye on that but I'll overrule it at this stage. Try not to plow over old ground again. If you have something new, which is what I asked you --
MR. SMITH: Right.
THE COURT: -- then you should proceed with it.

BY MR. SMITH:

Q. The issue with this is I'm wondering when the job was to place that you're paying Max for here on this, if you can recall, and what job it was.

A. Max Schwartz, I don't know if he was involved with the actual construction, the insulation portion of it.

Q. Okay.

A. I don't know what his capacity was with the company.

Q. No, I'm talking about your -- your jobs, your Ground Up jobs. What project did he work on for you?

A. I believe Pike Street in Salisbury.

Q. Pike Street. And when was that project completed, Mr. Anketell?

A. Realistically, I don't even know if really was 100 percent complete. There was work done when it was sold by the trustee in Castle Hill Properties.

Q. When was Max's work done, would you say, on that project?

A. I'm not 100 percent sure.

Q. Okay.

A. I -- it'd be --

Q. So --

A. -- a random guess.

Q. So at some prior time he did some work for you and you're paying him at this point --

A. Yes.

Q. -- correct? Okay. Okay. Thank you. Mr. Anketell, did you do any significant renovations on your house from

October of 2014 until April of 2015 or grounds?

A. I did renovations. It was completed in September.

Q. Can you describe the renovations?

A. It was related to a plumbing issue that flooded my house and it was to repair that damage.

Q. Okay. And about what time -- what time frame was this?

A. I believe it was done in August and September.

Q. August and September. So fully complete by October?

A. I believe it was finished in September, yes.

Q. Did you use any of your workers to -- to do work on that project?

A. Ground Up Construction worked on it.

Q. Ground Up. So Ground Up Construction worked on your house project?

A. That's correct.

Q. Okay. Do you know the names of the workers by any chance that -- do you recall their names?

A. Yes.

Q. Can I have them?

A. Kenny Lefrenswa, Jonathan Walters.

MR. REGAN: I raise the relevance objection once again, please.

THE COURT: Overruled. Overruled.

BY MR. SMITH:

Q. So, okay, so you -- you -- if we can go to page 10 of 53 for Exhibit --

MS. DIPIRO: That's B.

MR. SMITH: Exhibit B, please.

BY MR. SMITH:

Q. Okay. Are you there?

A. (No audible response.)

Q. So that's page 10 of 53 for the Santander accounts.

A. Yes.

Q. Okay. So on the right side, this is a check for $859.69 made out to John Walters.

A. It's tough to see. It's really tiny in the exhibit.

Q. Okay. Let's go to one that's easier to look at. How about on that right side, the one below that for $1,005.

A. I -- I can't see --

Q. You can't see it?

A. Yes.

Q. I can see it pretty well. If I were to say it was Kenny Lefrenswa, would that sound reasonable?

A. I'm sorry. What's that?

Q. If I were to say that that check was writing to Kenny Lefrenswa, would that be something you would agree to?

A. I can't see it.

Q. Okay. So is it possible that was written to Ken Lefrenswa?

A. It's possible, yes.

Q. Okay. Was -- would you consider Ken Lefrenswa a friend of yours, as well as a worker of yours?

A. I know him but we didn't hang out.

Q. It's on your Facebook page. You went to high school, that kind of thing?

A. (No audible response.)

Q. Okay. Let's move on. Thank you. So we're still on Exhibit B, page 4 of 53. There's another check I want to just touch on.

MR. REGAN: Did you say --

THE WITNESS: On what page, please?

MR. SMITH: So it's page 4 on Exhibit B.

MR. REGAN: Four of 53. Thank you.

MS. DIPIRO: That's on the new set of documents that we gave you.

MR. REGAN: I do not have your replacement pages at this time.

MS. DIPIRO: Oh, I have a copy right here.

MR. REGAN: Thank you.

BY MR. SMITH:

Q. Okay. So that's --

MS. DIPIRO: 4 of 53.

MR. SMITH: Page 4 of 53. That's Exhibit B.

THE WITNESS: I'm there.

BY MR. SMITH:

Q. I'm looking at a check for $3,000. This is the first check from the bottom on the left-hand column.

A. Yes.

Q. Okay. Can you tell me who that check was made payable to?

A. Which one was it, second one from the bottom on the left?

Q. Second one from the bottom on the left-hand column.

A. It was made to Laurie Anketell.

Q. Okay. And Laurie Anketell is your wife, is that correct?

A. That's correct.

Q. Can you tell me why this check was written to her?

A. Laurie loaned Castle Hill and Ground Up Construction funds to operate.

Q. Did you have other loans outstanding, as well, for Castle --

A. Yes.

Q. So why did you pay back Laurie instead of some of the other creditors?

MR. REGAN: Objection, Your Honor. Relevance.

THE COURT: Can you establish here --

MR. SMITH: I'm looking for some -- I think it's a credibility issue. I'm showing that these are preferential payments, that there were other debtors and this was, in our eyes --

THE COURT: Yeah. So this -- you haven't got a preference claim in this. I'm not sure you have standing to --

MR. SMITH: Okay.

THE COURT: -- to recover a preference claim and now you're saying that it's essentially cross-examination. You're trying to question his credibility with this. How does this question his credibility? The fact that he wrote --

MR. SMITH: Because --

THE COURT: -- a check to his wife? What --

MR. SMITH: From a business account for non-business activity it appears. Although it was a repayment of a loan, I suppose, so that is business but this was after a large payment that we made as well.

THE COURT: Okay. Sustained.

MR. SMITH: Okay.

THE COURT: I'll sustain the objection. Move on.

MR. SMITH: Okay.

BY MR. SMITH:

Q. So this was a payment -- repayment of a loan on this account?

THE COURT: No, no, no, no. I just sustained that objection.

MR. SMITH: Oh, okay.

THE COURT: All right. So move onto something new.

BY MR. SMITH:

Q. Okay. So there was wire sent out from this account for $2,300?

MR. REGAN: What page is that?

MR. SMITH: And that is on page --

MR. REGAN: Please?

MR. SMITH: -- page -- okay. This is still Exhibit B.

THE COURT: Can you hold -- oh, you keep looking but don't ask a question, all right? I want to -- hold on.

(Extended pause.)

THE COURT: All right. You can proceed.

MR. SMITH: Thank you.

BY MR. SMITH:

Q. Okay. Yeah, Exhibit B. This is the substitute document that we talked about earlier and it's page 3. Mr. Anketell, do you have a copy of the substituted document in that record?

A. I didn't see the substituted documents so I don't know.

THE COURT: Did you change it out? Did you put that in the -- in the -- all right. So you need to put your new --

MR. SMITH: Yeah.

THE COURT: Go ahead and change it out.

You have it Mary? All right. Mary will do it.

MS. DIPIRO: Thank you.

(Pause)

THE WITNESS: Page 3, was that?

THE CLERK: Yes, page 3.

MR. SMITH: Page 3 of Exhibit 3. Right. That's the Santander statement.

THE WITNESS: I'm on page 3.

MR. SMITH: Okay. Thank you.

BY MR. SMITH:

Q. So the first entry on this exhibit is an outgoing wire for $2,300 and this is something that we've asked about in 341 conferences that you were unclear. I'm wondering now --

MR. REGAN: Objection to the commentary, Your Honor.

THE COURT: Yeah. Overruled. He's refocusing the witness. Go ahead. Ask the question.

BY MR. SMITH:

Q. Okay. So this was something that you hadn't -- had any recollection of and I'm wondering if perhaps this was a -- a payback of a loan by any chance?

A. Strategic Funding was a company I did --

Q. Strategic Funding --

A. -- borrow capital from.

Q. Okay. So you -- when did you determine that that was the -- what this transfer was?

A. I don't know. I didn't make that determination. That's not my handwriting.

Q. That's not your handwriting. Do you know whose handwriting it is?

A. No.

Q. Okay. Okay. Thank you. One more -- okay. Are you familiar with Pete -- I'll let you -- are you familiar with someone named Peter Michaels?

A. I am.

Q. Okay. Can you describe your relationship with Mr. Michaels?

A. Pete Michaels and I worked together for some years and then we did some business ventures together.

Q. Okay. What kind of a business ventures did you -- did you complete?

A. Well, Pete and I worked on some properties where we purchased. Pete also was a capital investor with Ground Up Construction.

Q. So he loaned you money?

A. Loaned Ground Up Construction money.

Q. Okay. How much did he loan you?

A. (No audible response.)

Q. You can just estimate it.

A. Did he loan Ground Up Construction or me?

Q. Both.

A. Both of us?

MR. REGAN: Your Honor, I think I'm going to object to the form insofar as he's saying "both."

THE COURT: I'll sustain it. Ask him one at a time if you would?

MR. SMITH: Sure.

BY MR. SMITH:

Q. How much did he loan to Ground Up Construction?

A. I -- I don't have an exact figure, but if I had to estimate I'd say $50,000 maybe.

Q. Thank you. Did he also make loans to Castle Hill Properties?

A. Yes, he did.

Q. Can you estimate the size of those loans?

A. I would say it'd be closer to -- I don't know the exact number but, if I had to guess, I'd somewhere around $400,000.

Q. $400,000.

A. Yes.

Q. To Castle Hill?

A. Yes, I think so.

Q. Thank you.

A. I'm not sure exactly.

Q. That's fine. Thank you. And he made personal loans to you as well?

A. Not to me, as well. I --
Q. Okay.
A. I did not.
Q. Thank you. Okay. Can you tell me when Castle Hill purchased Pike Street property?
A. I'm not sure the exact date, but it was on or about the -- it was either December -- late December or early January of 2013.
Q. 2013.
A. Uh, no. '14, I'm sorry.
Q. '14. 2014.
A. Or December of '13, late December. Right around that area.
Q. So December of '13?
A. December '13, January of '14 possibly.
Q. Okay. That's -- okay. I understand. Thank you. That's fine. Let's, if we can move to Exhibit M, page 1 of Exhibit M, please.
A. I'm there.
Q. Okay. So can you describe this -- are you familiar with this document? Let's start there.
A. I am related.
Q. I'm sorry?
A. I --
Q. You --

A. I recognize it.

Q. Can you describe what it is?

A. A mortgage between Pete Michaels and Castle Hill Property.

Q. Okay. Did Peter Michaels sign this document?

A. It doesn't appear to be.

Q. Okay. Thank you. Did you sign this document?

A. I did.

Q. And what was the date of that -- that signature of this document executed?

A. March 19th, 2015.

Q. 2015. Okay. And the property, just to refresh -- the property on Pike Street was purchased in December of 2013, is that correct?

A. Or January, yeah, right around that area.

Q. January. Okay. So about -- what are they about, 14, 15 months prior to this document being signed, that's when Pike Street was purchased?

A. That's correct.

Q. Okay. Can you tell me what prompted the creation of this document?

A. I don't know what prompted it. Pete Michaels asked me to sign it and I said yeah.

Q. So Pete Michaels presented it to you, okay, to sign and you --

A. Yeah.
Q. -- signed it?
A. Yeah.
Q. Okay. Thank you. Did you sign it on or about the day that it was executed do you remember?
A. It was dated properly when I signed it.
Q. Okay. Thank you. When did you file for bankruptcy, Mr. Anketell?
A. April 8th.
Q. Of what year?
A. 2014.
Q. Okay. I thought it was '15, just to be clear.
A. I'm sorry, '15.
Q. Okay. So you filed for bankruptcy approximately three weeks after this document was created. Is that correct?
A. Yes, it looks that way.
Q. And Peter Michaels just gave it to you and said, "Please sign this document." No particular reason?
A. Yes.
Q. Okay. So there's no conversation prior to him giving you the document? He just did it out of the blue and gave it to you and so he has a secured interest in this property, is that correct?
A. He called me and asked me to sign it, yes.
Q. Okay. Mr. Anketell, when did you know you were going

to file for bankruptcy?

A. On April 6th.

Q. April 6th you knew. And before that, you -- you didn't consider it, can you say? Can you say when you first considered filing for bankruptcy, when you thought it would be a good way to -- to help out with the debts and -- and can you say when that was?

A. Chris LeBlanc suggested it on March 31st, the day after our conversation.

Q. March 31st, Chris LeBlanc suggested it?

A. Chris LeBlanc, yes.

Q. Okay. Okay. Thank you. One more set of questions regarding the contract. If we can go to Exhibit A, this is our dormer contract.

A. I'm there.

Q. So I just wanted to revisit some of the testimony that I -- that I gave and just go over some of the -- just confront it. Demolition, you had attributed a cost of 2,542, is that correct?

A. That's correct.

Q. Framing, 31,680; and planning -- planning, 3,105. Is that correct?

A. That's correct.

Q. Did you build a profit margin into these estimates? When you create a contract, do you create a profit margin that you want to get from the project? It's a standard thing with --

A. I do, yeah.

Q. Can you tell me what that margin is?

A. I don't know what it is.

Q. Well, what -- you've done projects before. Do you have a standard margin that you use, a template of how you --

A. I just plug it into a -- a program I purchased.

Q. Plug into a program and you re-input the profit margin at that time, is that -- is that correct?

A. It's already predetermined by the program.

Q. Okay. Well, what's the predetermined profit margin?

A. I don't know offhand, maybe fifteen or twenty percent.

Q. Twenty percent. Okay.

A. Fifteen or twenty.

Q. Okay. Okay. So now you claim that you -- that we -- that you, I'm sorry -- that you spent 59,000 -- approximately $60,000, let's call it, on the job, is that correct?

A. (No audible response.)

Q. Now we can go to --

THE COURT: Did -- was there --

MR. REGAN: Objection, Your Honor. He didn't answer.

THE WITNESS: I'm sorry.

THE COURT: Did you give a verbal answer, Mr. Anketell? Did you answer that?

THE WITNESS: I didn't answer.

THE COURT: He asked you if you spent 59,000 or something.

THE WITNESS: I didn't answer him.

THE COURT: You didn't.

MR. SMITH: Yeah.

THE COURT: Yeah. So give him a chance to answer.

MR. SMITH: Sorry about that.

THE WITNESS: What was the question again? I'm sorry.

BY MR. SMITH:

Q. So did you spend about $59,000? Is that your testimony?

A. Approximately, yes.

Q. 59,000. Okay. And we're working off Exhibit J, which was presented to us, that's page 2 of 2.

A. That's correct.

Q. Okay. So total payments minus expenses if $519, correct?

A. (No audible response.)

Q. In other words, you're saying that we -- we paid you $59,000. You're expenses for the job were what -- what they were and you subtract those and then you get to $519, correct?

A. Yes.

Q. Okay. So when we add up again these -- these expenses listed in the contract, these costs, they come out to significantly less than that.

A. Agreed.

Q. Okay. So how do you explain the difference in payments that we made, which is approximately $34,000?

A. Well, there were significant delays on the project which were produced by you slowing down the job at the beginning of the job, which put us into winter. Then we had extremely poor weather and it slowed the progression of the draw down, which extended the period of time that we had to do the work. Also, Chris LeBlanc and Paul Lance decided to do the work outside of the plans that were presented to them in structuring of the house and created a more -- a better structure, another property --

Q. Okay. So that -- additional expenses?

A. Yes. Additional expenses.

THE COURT: Yeah. All right. Let him finish, though. Don't interrupt his answer.

THE WITNESS: Yeah. So they -- they actually added on a number of expenses further than what I was expecting the actual cost of materials to cost.

BY MR. SMITH:

Q. Can you give an estimate of what those additional expenses were?

A. Yeah. They used all LV lumber -- LVL lumber, which is an engineered lumber rather than what was called for in the plans. They also used a particular type of sheathing in roofing material that carried a more expensive cost. They just -- they just ran up the costs.

Q. Who bought these materials? Was it -- did Paul Lance buy the materials?

A. Ground Up Construction did.

Q. Ground Up Construction bought the materials. And there -- so Ground Up bought these materials and where did -- where did Ground Up buy them?

A. Yankee Lumber.

Q. Okay. So I see $8,000 in costs. So there's still quite a bit of difference between those additions in $60,000, I'd say. Are there other expenses that we -- we didn't know about that were incurred?

A. As I see on this paper, there wasn't much difference from what I said before to what I said now.

Q. Okay. And just to go back a second, you mentioned that we slowed the job down. Can you expand on that and tell us how we slowed the job down there?

A. Yes. You asked me to hold off and you wanted to speak with me.

Q. Right. That was over the course of how many days was that would you say?

A. I don't know. I -- I know that Dave Jaquith was scheduled to be on the job looking at your project on the 23rd, about a week and a half after you signed the contract.

Q. So it's a matter of let's say five days, it sounds like, where we had some uncertainty?

A. Or ten days.

Q. Ten days. So ten days slowed it down and that costs you money. You mention that as being a cost to you. And that cost you how?

A. It's overhead.

Q. Overhead. So overhead implies there were costs related to that. So what exactly were these overhead --

A. Not related.

Q. -- costs --

MR. REGAN: Object. Your Honor, I just suggest this is becoming argumentative.

THE COURT: Well, it's essentially cross. It's hostile --

MR. REGAN: I understand.

THE COURT: Hostile witness. Overruled. Go ahead.

THE WITNESS: Can you ask the question again?

BY MR. SMITH:

Q. The question what was the overhead incurred by this delay of ten days?

A. It wasn't ten days. Your -- your delay crossed a start date of November to a start day of February.

Q. Of February. So we caused that delay. When did the plans finally come for the job. Do you recall?

A. In January.

Q. Could that be because you were late in paying David Jaquith as he testified?

A. No.

Q. No. So it had nothing to do with that. So why weren't the plans produced earlier? We had them in the house.

A. Dave Jaquith scheduled out a week in October to work on your plans, review them, go over them with you and then he was going to produce them. We were going to have them sometime early November. Because of your delay, Dave Jaquith's schedule had to get filled up with other products, I believe.

Q. Just --

A. And at that time, he ended up going, as he testified yesterday, going away. He had other projects in his pipeline.

Q. Okay. Thank you. So just revisiting on former testimony, you explained that the job stopped because we stopped payment, correct?

A. (No audible response.)

Q. The job stopped so this didn't abide by their side of the contract, is that right?

A. No, I don't believe I said that.

Q. Why did the job stop?

A. Chris LeBlanc stopped the job.

Q. Chris LeBlanc stopped the job. Why did Chris LeBlanc stop the job?

A. Because you didn't make payment.

Q. Because we didn't make payment to Mr. LeBlanc. Okay. Let's -- if we can just quickly go to Exhibit I. Page 1 of Exhibit I? Let me know when you're there.

A. I'm there.

Q. So when's that -- can you describe that document?

A. It's Dave Jaquith's affidavit.

Q. Dave Jaquith's signed affidavit. Can you scroll down to paragraph 6 of Dave Jaquith's signed affidavit, please?

A. Yep.

Q. Can you read that for us?

MR. REGAN: Objection, Your Honor. This has been moved in -- they moved to put it in evidence and it was rejected from evidence. Mr. Jaquith testified yesterday.

THE COURT: Right. What I ruled yesterday was that he could use this, in essence, on cross-examination, ask this witness about it, but it's not going to come into evidence. Overruled.

MR. REGAN: Thank you, Your Honor.

THE COURT: Go ahead.

THE WITNESS: It says, "The Smith's allowed me to access their home and take measurements and did not delay the delivery of the plans."

BY MR. SMITH:

Q. Okay. In any way it looks like, that's the end of it.

A. I'm sorry. What was that question?

Q. You didn't read the entire part.

A. You said down to 6, right?

Q. Yeah.

A. All right. "The Smiths always allowed me access into their home to take measurements and didn't delay me in anyway -- delay the delivery of the plans in any way."

Q. Okay. And this is -- okay. Thank you very much. I just want to revisit one more thing again. So the contract stopped because we didn't pay Chris LeBlanc. Is that right?

A. You didn't pay Ground Up Construction.

Q. We didn't pay Ground Up Construction and so Chris LeBlanc was hurt because of us?

A. I'm sorry. What was that?

Q. Because of our non-payment Chris LeBlanc stopped the project, is that -- is that what you're saying?

A. Chris LeBlanc pulled the guys off the project, yes.

Q. Okay. So -- and because of the stoppage of the project Chris didn't get paid, is that correct, in full what he was due?

A. Yeah, that's true.

Q. Is that true of Paul Lance as well?
A. That's true.
Q. Okay. So why did they not testify for you, Damian?
MR. REGAN: May I hear the question again, please? I didn't quite hear the question.
THE COURT: His question is, why these witnesses weren't called -- well, I'm sorry. You know what? I'm going to take that as an objection to that question. It --
MR. SMITH: I'll withdraw.
THE COURT: It doesn't make sense to me. He hasn't had a chance to call witnesses.

BY MR. SMITH:

Q. So again, I want to revisit what we paid you, Mr. Anketell, the $77,800. Did we agree on that?
A. No, I don't.
Q. You don't agree on that?
A. No.
Q. So what did we -- what did we pay you?
A. I don't have the exact number but I'd say approximately $61,000.
Q. Okay. Thank you. Okay. Regarding the charge-back issue, correct, you're familiar with that, the --
A. I --
Q. -- $17,000 that we had returned from our credit card?
A. I'm familiar.

Q. Okay. Did you return that money to us or was it -- was it the credit card?

A. I am responsible for that, so I guess I did.

Q. So is there -- does PayPal have a claim against you in anyway for $17,000?

A. What do you mean, a claim?

Q. Well, it's alleged that -- that PayPal is a creditor and that the $17,000 is owed by you to satisfy a debt that you -- that you have with them.

A. That's correct.

Q. That's correct. Okay. And where was that money used if you took possession of it? Can you explain?

A. I don't know.

Q. Okay. So would you include that as a total payment that you received, that $17,000?

A. From you? No.

Q. No. When did the work stop on the project?

A. I believe Chris pulled the people off the project on April 1st.

Q. Okay. So at that point did you have $77,000 for -- from us?

A. At that point, I did.

Q. At that point you did. So at that point, you did have $77,000?

A. That's correct.

Q. And so according to -- to our records here in the cost of construction, which would include contractors and whatnot, there was still a significant difference between what we paid you and what was expended, approximately -- even if we used your statement of $60,000, there would be --

MR. REGAN: Your Honor --

MR. SMITH: -- an $18,000 --

MR. REGAN: -- this is not --

MR. SMITH: -- difference.

MR. REGAN: -- question. It's an argument.

THE COURT: Yeah. So I'm --

MR. SMITH: Okay.

THE COURT: -- to sustain it. And let me just say that it's amply established --

MR. SMITH: Okay.

THE COURT: -- to me -- wait. Listen. It's amply established to me that either -- that something in the neighborhood of $77,000 was transferred either through wire transfers, checks or credit card payments to Mr. Anketell by you. It appears amply established that you got 16,000 or 17,000 back. Now you guys can quibble a lot about meaning --

MR. SMITH: Right.

THE COURT: -- of all that, but those are the facts. So you don't really -- neither side needs to belabor that point --

MR. SMITH: Okay.

THE COURT: -- a whole lot more, okay? Is there anything new that you have? Anything else? Let’s -- I’d like to move this --

MR. SMITH: Okay. Yeah, I’m -- we’re done. Thank you.

THE COURT: I don’t mean -- I’m not bullying you into ending this. If you have a question, ask it, but --

MR. SMITH: Yeah. I think we’re all set. Thank you, Your Honor.

THE COURT: Now it’s just kind of quibbling, you know, and --

MR. SMITH: I understand.

THE COURT: All right.

MS. DIPIRO: Thank you.

THE COURT: Okay. All right. You stay right there.

THE WITNESS: Yes, sir.

THE COURT: Anything else? Any other witnesses? I allowed you to recall Mr. Anketell.

MR. SMITH: Thank you.

THE COURT: Now we use the word “rest.” Do you rest?

MR. SMITH: We rest, Your Honor.

THE COURT: No other evidence that you wish to offer at this time, correct?

MR. SMITH: That’s correct.

THE COURT: Okay. All right. So they've rested. Your move.

MR. REGAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. REGAN:

Q. Mr. Anketell, would you please describe in a general way your education, training and experience in the building and construction industry?

A. Well, my -- I grew up in a construction family. My father owned a roofing and framing general contracting company. I worked with him from my earliest memory. I came through high school working on construction and framing, roofing and contracting on construction sites. From there, I worked for Atlantic Weatherization, which is an insulation, general contracting company. I also worked with Atlantic Paving, who was general contracting and a paving, excavation corporation. I then worked again for Atlantic Weatherization where I worked as a -- basically a work group, you know, work team supervisor for a number of different projects that we had going on at one time. So I'd supervise three to four jobs to make sure that -- that the projects were running according to the -- to schedule, making sure that they were supplied and all that.

Q. In 2014, when you first met Mr. Smith and Ms. DiPiro how many years would you say you'd been employed and made your living in the building and construction trades?

A. Fifteen or more.

Q. And in the course of that experience had you performed projects of putting on dormers and gutting and rehabbing homes and basically tear-down and rehab?

A. Yes, sir.

Q. So it was not a -- was there anything new, different or unusual about the nature of the work called for on the Smith project that you hadn't encountered over the years?

A. No, sir.

Q. Now, we discussed the fact that you are the principal of Ground Up and Castle Hill. About when was Ground Up incorporated?

A. I believe it was in October of 2012.

Q. And when was Castle Hill organized?

A. I believe it was February of 2012.

Q. Now, in the period of time after those companies were organized and before you had your first conversations with the Smiths, about what volume of business were you -- had you done?

A. I'm not sure the exact amount, but I could estimate two million, two-and-a half-million, three million would be a good estimate.

Q. At the time that you first were talking with the Smiths about this project, how many other jobs did you have scheduled or out for bid?

A. I'm not sure of the exact amount, but approximately five to ten.

Q. Now, you were affiliated with a company by which the Smith -- by which Mr. Smith and Ms. DiPiro came up with your name. What was that company please?

A. It was called HomeAdvisor.

Q. All right.

THE COURT: Called what?

THE WITNESS: HomeAdvisor. I'm sorry.

THE COURT: HomeAdvisor?

THE WITNESS: HomeAdvisor.

THE COURT: Okay.

BY MR. REGAN:

Q. And just describe the nature of the service that they provided for you or if you provided any to them?

A. They -- they would offer referrals for me to call -- well, they would refer my name to clients in order for me to work on a project. They did background checks on my employees. They did background checks on my company and put our name out to other people.

Q. Okay. As you understand it, given your experience with that company, would a person who was having his background checked be notified by them before they did the check?

A. Not that I would know. No. I'd say no.

Q. Okay. In addition to the background checks that they performed did you do other background checks of your own?

A. Yes, I did.

Q. Would you describe what your practice was in that regard?

A. Well, I would check -- first thing I would do is check the sex offender registries. I would check licenses. I'd go onto the Massachusetts Department of Public Safety, look for license violations. I'd just make sure that their licenses are current and up to date.

Q. Now, I think you may have answered this in response to Mr. Smith's question. At some point it came to your realization that you were in enough financial difficulty there was a big problem, right?

A. Yes, sir.

Q. Approximately when did that occur?

A. I'd say, March 31st.

Q. And can you describe the circumstances that led up to that realization?

A. Well, my conversation with the Smiths earlier that week, I believe it was the 30th, they were unable to meet their contract obligation regarding the framing of the -- their property and so they requested that we do the note on the property. They made a partial payment on that contractual portion and when I spoke with them. After speaking with Chris LeBlanc he said that he can't take the note. You've got go forward and get the money from them. So I talked to them and asked them if we could, you know -- if they could make the full payment and they said that they could not pay me anymore money. The next day, I spoke with Chris LeBlanc and he suggested that I look for a bankruptcy attorney.

Q. Would you describe what the relationship was, what the deal was between yourself and Chris or Ground Up and Chris?

A. In 2014 in the summer, Chris and I met a few times to speak about joining partnerships, joining together to put our expertise together. Approximately -- you know, we talked about we had some jobs going on and we decided that, you know, we'll find a job, a project, that we could mutually meet together and start to work on the project together. Chris had some projects that he was finishing up in September. I had some projects I was finishing up in September and the Smiths' job was the job that we identified to do that. Chris and I at that point agreed to join as partners and -- and move forward with our mutual -- you know, our mutual partnership. Chris used my HIC and we used -- then Ground Up Construction used his construction supervisor's license.

Q. And HIC, just to clarify, is what, please?

A. Home Improvement Contractor's license -- license.

Q. And is that a registration with the Commonwealth of Massachusetts?

A. Yes, sir.

Q. Direct your attention, please, to Exhibit Number 1 --

or letter Y. Yeah. No, I'm sorry. It's X. Excuse me. The building --

A. Yes, sir.

THE CLERK: It's X.

MR. REGAN: Permit. Thank you. It's X.

BY MR. REGAN:

Q. At some point you went to the building inspector's office in Newburyport with respect to this project, did you not?

A. Yes, sir.

Q. All right. And did you fill out an application?

A. I did.

Q. And directing your attention to page 4 of 7 of Exhibit 6, do you recognize what that document is, sir?

A. I do.

Q. Okay. And what's your understanding of what that document is?

A. It is a portion of the building and permit from the town of Newbury. It's an information gatherer.

Q. And at the bottom it appears to read, "I hereby apply for a permit as the agent of the owner." Did you sign that?

A. Yes, sir.

Q. Were you acting as an agent of Mr. Smith in that regard?

A. I was.

Q. All right. There's a registration number to the right of the signature line, 176730. Is that your correct number?

A. Yes, it is.

Q. Okay. The following page, 5 of 7 --

A. Yes, sir.

Q. -- it states -- it states the name of your company and the address. Does it state it correctly and accurately?

A. It does. Yes, sir.

Q. Okay. It also states that -- I'm sorry. Just stay here. On page 7 of 7 there's a provision for you to state the owner. You state Tim Smith. Was that accurate?

A. Yes, sir.

Q. Okay. Contractor, Chris LeBlanc; was that accurate?

A. Yes, sir.

Q. And his address, is that correct as far as you know?

A. It is correct.

Q. Is that his construction supervisor license number as far as you know?

A. As far as I know, yes, it is.

Q. All right. And who's the applicant?

A. I am.

Q. And you signed in that regard?

A. Yes, sir.

Q. Anything on that page that's not accurate, sir?

A. Actually, there is.
Q. What's that?
A. The address of Lowell Street. We're in the process of -- Ground Up Construction was in the process of leasing out our property. We're in the process of moving our address.
Q. Okay. Had the move been complete?
A. It was not, no, sir.
Q. Okay. So understanding you're in transition, was that a fair statement of your office location?
A. Yes, it would have been.
Q. Could you describe for me the series of events and histories regarding the payments you received from Mr. Smith and Ms. DiPiro on this job starting with the first payment in October?
A. Yes. Well, the contract was signed on the 13th of October and at the time an amount was due with the contract signature. They told me that they -- they didn't have the checks available from their credit card -- I mean from their home equity line, so they asked me to wait for the check. They'll give me the signed copy of the contract.
Q. Had you incurred any costs on this project prior to receiving their first payment on October 17th?
A. Yes, sir, I did.
Q. Would you describe what costs you had incurred?
A. My -- myself as an employer, Ground Up Construction,

and Kenny Lefrenswa as an employee of Ground Up Construction were at their house on the 15th looking at the site, reviewing the site and prepping for other measurements and stuff to be taking place.

Q. Any other costs that you can recall having been incurred before the 17th?

A. I don’t recall any.

Q. But you did receive that payment on the 17th. When next, if at all, did you receive any payments?

A. I believe the next payment was received on the 14th -- I mean, the 4th of February.

Q. And when you describe any circumstances or conversations related to that payment?

A. The day of the payment we started our construction, demolition of the interior. Theresa told me that she had only one checkbook with her and that that account only had $14,000 in it and she would have the pay me the remaining balance later.

Q. Who performed the interior demolition?

A. Chris LeBlanc, Steve -- I forget his last name -- and Nate Nally.

Q. And with respect to that date of February the 4th, do you know when the demolition activities actually began?

A. I believe it was that day.

Q. You know when they were completed?

A. I couldn't say.
Q. When next did you receive any payments from Ms. DiPiro and Mr. Smith?
A. I'm not sure of the dates but the next payments were a $1,300 payment and a $6,200 payment approximately.
Q. And with respect to the contract, where did those payments fit in? What were they for?
A. They were for the partially the balance due that was due on February 4th when we started the demolition on the project.
Q. Did you have any further discussions with either Ms. DiPiro or Mr. Smith concerning the question of payments through the time that you got those other two checks?
A. Yeah. When on or about when we received the checks, she -- she told me that she didn't have enough money in her account, that she had to do two different checkbooks because there wasn't enough money in either one. And at that time, they started asking if it -- it would be something that Ground Up Construction would consider is taking credit card payments for the remaining balance of the contract.
Q. When next, if at all, did you receive any payments in this regard?
A. I'm not sure of the exact date, but the next payment was a -- I believe a $6,200 payment.
Q. And how was that made?

A. That was a payment through credit card that I had to set up a PayPal's account specifically for this project.

Q. Did you have a PayPal account before that -- this project?

A. No, I did not.

Q. Are there costs associated with that PayPal account?

A. Three percent of whatever I bring in.

Q. That is if they pay $100, you see 97?

A. Yes, sir.

Q. Okay. So that -- and the amount of that payment we're talking about was approximately what, please?

A. $6200.

Q. Okay.

THE COURT: So we're going to need to take a brief recess.

MR. REGAN: Yes, Your Honor. I wasn't really going to do much of a lunch, but why don't we take a -- a little bit longer of a break right now, all right, and not just a five-minute break. We'll take a -- we'll take a half-hour break and then we'll come back and finish the case.

How does everybody feel about where we are? Are we going to finish this case?

MR. REGAN: I don't have five minutes left of questions, Your Honor.

THE COURT: Oh, you don't? You don't?

MR. REGAN: No.

THE COURT: All right. We're going to take our break now. All right? We're going to come back in a half-hour, all right?

MR. REGAN: Thank you, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thank you, Your Honor.

(Off the record at 12:45:44 p.m.)

*** * * * * * * ***

(On the record from 1:21:40 p.m.)

THE COURT: All right. Good afternoon.

MR. REGAN: Good afternoon, Your Honor.

THE WITNESS: Good afternoon.

THE COURT: So we're ready to proceed again. Mr. Anketell back to the stand and ...

BY MR. REGAN:

Q. Mr. Anketell, we just finished talking about a -- the first payment you received by credit card from Mr. Smith and Ms. DiPiro. Was there a second credit card payment you received from them?

A. Yes, I did.

Q. What was the approximate amount of that?

A. $11,000.

Q. Now at some point, did it come to your attention that the job was progressing more rapidly than you had originally expected?

A. Yes, sir.

Q. Approximately when did that occur?

A. About the same time as the -- the $11,000 payment.

Q. And how did you come by that understanding?

A. Chris LeBlanc told me that it was moving forward --

Q. Okay.

A. -- faster.

Q. Did Chris LeBlanc describe for you at any time the status of the framing?

A. He told me that the framing, the rough framing was complete.

Q. Did you have some conversation with Mr. Smith and Ms. DiPiro in connection with that $11,000 credit card payment?

A. Yes, I told that the payment was due and at that time they -- they told me that they weren't going to be able to pay the whole amount and they asked if we could move forward with promissory note. And they paid me via a debit card at first from one of their banks, I'm not sure which one, but they called me later that evening, asked me to refund them that money so that they can pay me with a credit card instead of a debit card and I did so.

Q. Okay. Do you recall what day -- that is what date it was that those conversations and payments occurred?

A. I do not remember.

Q. If I suggest to you March the 25th, does that help your memory at all?

A. I don't recall it, but it does sound -- sound about right.

Q. Okay. When you communicated to them that the job was progressing more rapidly, did you believe it? Did it appear to be true?

A. Yes, it did.

Q. Did you have any reason to doubt Mr. LeBlanc's description to you of the status of the job?

A. No, sir.

Q. When did you actually receive the signed note?

A. April 1st in the afternoon sometime.

Q. Is there anything else that happened on April the 1st that we've already discussed?

A. Yes. Chris LeBlanc pulled the employees off the prop -- off the job earlier that morning.

Q. When Chris -- do you know if Chris LeBlanc was aware of the note when he pulled the people off the job?

A. I wouldn't know but we did discuss it. I don't know what his understanding of it was.

Q. Okay.

THE COURT: All right. I'm going to -- I'm going to strike the "but" through the end of the sentence. That's speculation.

THE WITNESS: But what --

THE COURT: These folks don't know to object and it's -- there's rank hearsay being testified to here. You relied heavily on objections to their eliciting hearsay from these same witnesses. So in the interest of fairness, I am -- I'm going to exercise some discretion on my part to eliminate rank hearsay and other inadmissible evidence.

MR. REGAN: Sure.

THE COURT: So I'd ask counsel to do your best to --

MR. REGAN: Yes, Your Honor.

THE COURT: -- comply with the Rules of Evidence.

MR. REGAN: Yes, Your Honor.

BY MR. REGAN:

Q. During the meeting that's been discussed on April the 3rd did you express a willingness and an intent to obtain financing and continue the job?

A. I did, yes.

Q. And after that meeting what, if anything, did you do in an effort to obtain more financing?

A. I sought working capital through multiple investment -- capital investment companies. I also sought to sell their note off that they signed.

Q. And would you just describe the mechanism by which you would sell the note and realize cash for it?

A. I'm the owner of Castle Hill Properties, which is an investment -- which is a real estate investment company. I network with a bunch of people who work -- deal with notes.

Q. Well, on this particular note which had a face amount of -- was it approximately $33,000?

A. Yes, sir, plus the financing fee so it would come up to about $36,000.

Q. Okay. What would you reasonably expect -- based on your experience, what would you expect to have realized in cash if you'd been able to sell that note?

A. I was hoping to receive $25,000 to $28,000 on that note.

Q. So after the May -- the April 3rd meeting, you -- you began these efforts. Did any of them come to fruition before you received the summons and complaint?

A. No, sir.

Q. Referring back to the testimony you heard from Mr. Smith and the range of October 20th, 2014, do you recall those conversations?

A. Somewhat; yes, sir.

Q. Can you tell me what you recall -- first, were they in person or were they on the phone?

A. I believe we only had one phone conversation.

Q. And do you recall -- well, just relate what you recall; who said what to whom?

A. On the -- on or about that date, we talked about why

I didn't tell him I was having surgery and why I didn't respond to them so quickly and that -- that's pretty much what the conversations were.

Q. Did he ask for his money back at any time?

A. No, sir.

Q. Did he request to cancel the contract at any time?

A. No, sir.

Q. Did you discuss with him any costs that you had incurred on the job up through that date during that conversation?

A. I don't recall any.

Q. That is, you -- is that to say, you know it didn't happen or you just don't recall one way or the other?

A. I don't recall one way or another.

MR. REGAN: Thank you, sir. I have no further questions.

THE COURT: All right. Cross?

CROSS-EXAMINATION

BY MS. DIPIRO:

Q. First, I'd like to have you turn to Exhibit F.

A. I am there.

Q. Could you -- Mr. Anketell, could you tell me what this document is?

A. Looks to be an affidavit signed by Christopher LeBlanc.

Q. Could you please turn to page 2 of this affidavit?

A. I'm there.

Q. Could you please read the fourth paragraph from the bottom?

A. (Reading:)

"Damian Anketell never expressed to me that the Smiths' dormer project had halted because the Smiths did not make payments as due to the contractor. I did not believe the project was halted by the Smiths' lack of making contractual payments at this time."

Q. Thank you. Could you please read the paragraph after that?

THE COURT: Well, hold on. I've excluded this as hearsay.

MR. REGAN: You have, Your Honor.

THE COURT: I have. And so let me just have you understand what it is --

MS. DIPIRO: Okay.

THE COURT: -- you can do with this document --

MS. DIPIRO: Okay.

THE COURT: -- because right now you're just having him read it in.

MS. DIPIRO: Okay.

THE COURT: That's not what you should do with it, all right?

MS. DIPIRO: Okay.

THE COURT: You can ask him whether or not that refreshes his recollection as to the -- whether that was a true statement.

MS. DIPIRO: All right. Thank you.

THE COURT: That's what you want to do and --

MS. DIPIRO: Thank you.

THE COURT: -- and we'll see whether it -- whether he agrees with that statement or not, but it's not being -- that is not being admitted for the truth of the statement that Mr. LeBlanc allegedly made in that affidavit, okay?

MS. DIPIRO: Okay.

THE COURT: All right.

MS. DIPIRO: Gotcha.

BY MS. DIPIRO:

Q. Do you believe that statement might be true?

A. I'm sorry. Which paragraph was that on?

Q. The one that you just read.

A. (No audible response.)

Q. Regarding --

A. That --

THE COURT: Do you have it in mind, sir? Do you know what --

THE WITNESS: I just -- I just forgot which one we read.

THE COURT: It's all fine. I just want to make sure since we can ask -- you can ask her to -- to direct you again to that.

THE WITNESS: Can you please redirect me to that? I'm sorry.

BY MS. DIPIRO:

Q. No problem. It's the fourth paragraph from the bottom on page 2.

A. Okay. I got it. Thank you. I disagree with that statement.

Q. Thank you. Could you read the -- the paragraph --

THE COURT: Yes.

MS. DIPIRO: -- the third --

THE COURT: Yes --

MS. DIPIRO: -- paragraph --

THE COURT: -- counsel?

MR. REGAN: Just I would ask that she have him read it silently and then pose her question, Your Honor.

MS. DIPIRO: Okay.

THE COURT: That's --

MS. DIPIRO: That's fine.

THE COURT: That's fair enough.

MS. DIPIRO: That's fine.

THE COURT: That's an appropriate request.

MS. DIPIRO: Thank you.

BY MS. DIPIRO:

Q. Could you read the third paragraph from the bottom silently?

A. (No audible response.)

THE COURT: To yourself.

BY MS. DIPIRO:

Q. Did you read it?

A. Yes. There’s two answers to that. The first answer is I did not ask Chris LeBlanc to run any background checks and secondly, I don’t know if he ever ran any background checks.

Q. Were they his employees?

A. They were --

Q. Steve and Nate?

A. They were Ground Up Construction employees.

Q. Were they on like your payroll?

A. They were getting paid by Ground Up Construction.

Q. Were any checks from your payroll being paid to them?

A. At they time, they were cash employees.

Q. And how were you introduced to Nate and Steve?

A. Through Chris LeBlanc.

Q. And if they were to get paid, how would that happen?

A. I would --

MR. REGAN: He just -- it was just answered, Your Honor. He just answered before the question they were cash employees.

THE COURT: All right. So I think that that's cumulative evidence. He just testified that they were cash employees.

MS. DIPIRO: I was trying to find out if --

BY MS. DIPIRO:

Q. Did any of those payments go through Chris and then be --

A. Yes.

Q. -- given to the employees?

A. Yes, they did go through Chris.

Q. Could you read silently the second to the last paragraph on page 2 of 3?

A. (No audible response.)

Q. Do you believe that that to be true?

A. No, I do not.

Q. And one more. Could you please read the first two -- the second paragraph on page 2 of 3 and only the first sentence?

A. Can you -- can you say the first words?

Q. It starts with "The purpose of my meeting ...."

A. Okay. Just the first paragraph -- first sentence you said?

Q. Yes.

(Pause)

A. I would say yes, that -- that could be true.

Q. That could be true.

MS. DIPIRO: Could I have that statement admitted into evidence?

THE COURT: He can read it. Go ahead and read it.

BY MS. DIPIRO:

Q. Could you read it?

A. "The purpose of the meeting with the Smiths on October" -- I'm sorry -- "on April 3rd, 2015 was to discuss Ground Up Construction and Anketell financial problems and Ground Up Construction's inability to complete the dormer project because the Smiths' deposits and funds have been depleted."

Q. Could you tell me again as of 4/3 how much we had given you? Was it -- let me change the question. Did you -- do you agree that as of 4/3 we gave you approximately $78,000?

MR. REGAN: Your Honor, this is again cumulative.

THE COURT: Overruled. I've overruled the objection, but please -- we have evidence of this but you --

MS. DIPIRO: Okay.

THE COURT: -- can answer it, sir.

THE WITNESS: What was the question again, please?

BY MS. DIPIRO:

Q. Do you believe that on April 3rd, 2015 we gave you $78,000?

A. I do.

Q. Can you please turn to page 3 of 3?
A. Yep.
Q. And could you please read the first paragraph silently?
(Pause)
A. Yep.
Q. Do you agree to that statement?
A. I disagree with that statement.
Q. Can I ask what you disagree with?
A. The statement.
Q. Okay. Can I ask you what percent of the $111,000 contract do you believe was completed as of 4/3?
A. I don’t know. Chris LeBlanc was in charge of the project. He managed the day-to-day operations on the site and he was responsible for measuring that, not me.
Q. Does 25 percent seem reasonable? That’s about $27,000?
A. I don’t know. You’d have to speak with Chris LeBlanc on that.
Q. Thank you. Could you please turn to Exhibit Q?
A. Yep.
Q. Could you read the date -- could you read the date on the top of that text?
A. Looks like April 4th, 2015.
Q. Could you read the text itself silently?

(Pause)

A. Yes.

Q. Do you remember that text or do --

A. I don't recall it, no.

MS. DIPIRO: Can I admit this into evidence, Your Honor?

THE COURT: All right. So lay some foundation. What is it? Ask him, not me.

MS. DIPIRO: Yeah.

THE COURT: Ask him.

MS. DIPIRO: Exactly.

BY MS. DIPIRO:

Q. Do you recognize what this is?

A. Looks like a text.

Q. And do you know who this text was written to by looking at that document?

A. It looks like it was sent to me, Chris LeBlanc and Timothy Smith.

Q. From?

A. From Tim Smith.

Q. Whose name is at the end of the text?

A. Your name is at the end of the text but it says "Tim" on the top part of that text.

Q. That is for the statement above it.

A. I'm sorry.

Q. That's okay.
A. It says "Theresa" inside the text.
Q. Yeah. I understand this is confusing. Do you agree that that might be a text that I had sent you?

MR. REGAN: Objection, Your Honor. Might be form.

MS. DIPIRO: Is that --

THE COURT: Hold on. Sustained. Calls for speculation.

MS. DIPIRO: Can I admit this at this point?

THE COURT: Okay. Objection?

MR. REGAN: I object. It's a document which he's already said he doesn't recognize. He has not identified. And other than that, I think this is the same thing as the out of court statements we've discussed in the various affidavits. It's hearsay. It's not recognized by the witness.

THE COURT: Right.

MS. DIPIRO: It's a screenshot of my cell phone.

THE COURT: Oh, I know what it is. I am going to overrule the objection and admit it for purposes of establishing notice only, okay?

Plaintiffs' Exhibit #Q Marked and Admitted Into Evidence

MS. DIPIRO: Thank you.

BY MS. DIPIRO:

Q. Did you ever respond, in any way, to that text?
A. No.

Q. Thank you. Did you testify yesterday that your surgery, your back surgery, was done prior to signing the contract?

A. No.

MS. DIPIRO: Is there any way for us to check that record, Your Honor?

THE COURT: What was that? What was that?

MR. REGAN: Objection.

MS. DIPIRO: I believe he testified yesterday that his back surgery was done before we signed the contract.

MR. REGAN: Your Honor, the --

MS. DIPIRO: The surgery.

MR. REGAN: -- record speaks for itself. I don't have -- I don't believe that's a correct statement of the record but --

THE COURT: Yeah. So the record will speak to it. My memory of it, you know, will -- will inform me as the finder of fact --

MS. DIPIRO: Okay.

THE COURT: -- about it, which I can certainly consider in formulating my ultimate ruling and findings of fact. I can rely on the transcript. I don't have any way to give you a transcript to impeach him with.

MS. DIPIRO: Yeah. Thank you.

BY MS. DIPIRO:

Q. Do you recall that testimony yesterday?

A. I recall telling you that my surgery was prior to my -- receiving the first payment.

Q. That may be correct. And today you testified otherwise.

A. So I had my --

Q. Correct?

A. -- surgery prior to receiving the payment, yes.

Q. Thank you. Are you familiar with how HomeAdvisor -- the HomeAdvisor's procedure on applicants background check?

A. I'm not, no.

Q. Were you aware that HomeAdvisor only checks the applicant's background?

A. Not to my knowledge, no.

Q. That only the applicant's background is checked?

A. That's not true.

Q. And how do you know that?

A. Because they requested all of my employees' information when I signed up for them -- with them.

Q. Thank you. When did they check it?

A. When I signed up with them. I'm not sure the date.

Q. How do you know they checked it?

A. They told me they did.

Q. Did you have to provide any Social Security numbers?

A. I don't recall the exact procedure but I gave them the information they requested.

Q. So you don't remember making a call and saying, "What's your Social Security number?"

A. No, I didn't handle the day-to-day. When we signed up, I had office staff that handled most of the administrative aspects that, so what they actually gave them I'm not 100 percent sure.

Q. So you didn't actually fill out the application, a staff member did?

A. I signed the application to sign up with HomeAdvisor.

Q. And you signed it?

A. Yes.

Q. What criminal charges are you facing related to this project?

MR. REGAN: Objection, Your Honor.

THE COURT: Hold on. Okay. Basis?

MR. REGAN: Relevance.

MS. DIPIRO: Well --

THE COURT: Hold on. Hold on. Just give me a minute. I mean, its relevance is impeachment. That's all, but is it admissible for that; is it a permissible method of impeaching this witness?

MR. REGAN: Your Honor, while you're looking that up may pose another objection here which is I think we're far beyond the scope of his direct --

THE COURT: Well --

MR. REGAN: -- as well --

THE COURT: -- impeachment --

MR. REGAN: -- and rehashing old ground.

THE COURT: Well, this certainly isn't --

MR. REGAN: No, this is not.

THE COURT: Impeachment is always -- is always permissible on cross-examination, so whether or not it's in the funnel of what you asked, his credibility was put at stake at issue when you put him on the stand.

MR. REGAN: Certainly, Your Honor.

THE COURT: So and I -- I just need to see what --

(Pause)

Well, what is the purpose of this testimony? Don't tell me what -- don't tell me facts. I want to know why you want to ask him this.

MS. DIPIRO: Impeachment and credibility, Your Honor.

THE COURT: On what issue? On impeachment as to what?

MS. DIPIRO: As to --

THE COURT: You're saying his truthfulness? His --

MS. DIPIRO: His truthfulness.

THE COURT: -- propensity to perform the same --

MS. DIPIRO: Credibility and truthfulness.

THE COURT: Okay. So the Federal Rule of Evidence

404(b) deals with the evidence of other -- of crimes, wrongs or other acts and a -- such a evidence of a -- of crime, and my understanding is your question is, are you facing criminal charges. That's what you asked him?

MS. DIPIRO: Related to this project.

THE COURT: Related to this project. That use of that information is prohibited to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. So that would be -- all right. It is, however, permissible to use that evidence for another purpose such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident and the rest is irrelevant. It relates only to a criminal case.

So having heard the rule that way does that help you tell me what the purpose is for you asking this question? You can see that this is a -- it's narrow.

MS. DIPIRO: To prove fraud, Your Honor, and intent. To prove intent and to prove fraud.

THE COURT: So --

MS. DIPIRO: It's to prove intent to commit fraud.

THE COURT: All right. The question that -- as an offer of proof, which would mean I'm going to ask you about a fact. I don't infer anything from it. I'm going to ask about a fact. Has Mr. Anketell been convicted of -- of any crime related to this? Is that what your evidence would be?

MS. DIPIRO: He's facing criminal charges.

THE COURT: Okay. So he's been charged.

MS. DIPIRO: Charged. He has not been convicted.

THE COURT: That's what your evidence would be?

MS. DIPIRO: Yes.

THE COURT: All right. I'll exclude this, all right? So your objection is sustained.

MS. DIPIRO: Thank you, Your Honor. No further questions.

THE COURT: Okay. Any redirect on this witness?

MR. REGAN: No further questions, Your Honor.

THE COURT: All right. Thank you, Mr. Anketell.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: So, Mr. Regan, any other evidence today?

MR. REGAN: No other evidence except the exhibits that have already been entered by agreement, Your Honor.

THE COURT: Okay. So they're in.

MR. REGAN: They're in.

THE COURT: All right. I'm going to turn back to the Smiths then. So Mr. Regan has rested his case. This is when you would have an opportunity to offer any rebuttal evidence. Since you went first, he goes second, you have a chance to go third to rebut anything that he put in on his case. But again, it's a narrow -- narrowing -- is there anything that you'd like to call a witness on, including yourselves, in order to retort or rebut what you have heard now essentially from Mr. Anketell? Do you want a minute to talk that over?

MR. SMITH: Thank you.

THE COURT: I'm taking a short break, very short. And by the way, this should be very narrow.

MS. DIPIRO: Yes.

THE COURT: This would just a few minutes, all right? We're not going to launch into a whole new part of the trial but if there's something you want to take the stand to respond to, you'll have that opportunity at this point, okay?

MR. SMITH: Okay.

THE COURT: All right. I'll take a couple minutes.

(Off the record at 1:51:36 p.m.)

*** * * * * * * * ***

(On the record at 1:59:10 p.m.)

THE COURT: All right. Be seated. All right. So what's the decision?

MS. DIPIRO: We rest our case, Your Honor.

THE COURT: Okay. All right. So we're all done with the trial.

(Pause)

All right. So I usually, at the end of an evidentiary hearing I will ask the parties to give me proposed findings and rulings of law, so finding what you -- you say the facts have been -- what facts have been established in support of your claims and also conclusions of law. You know, where you're *pro se*, I think that's going to be very hard for you to do. So what do you think? Are you inclined to have that or not?

MR. REGAN: I certainly would want to prepare them for your consideration. Yes, Your Honor. I think that's appropriate step. We've been kind to *pro se* litigants but I don't think we have to omit not only a typical but a crucial part of the process.

THE COURT: Fair enough. I accept that comment. So Mr. Regan would like to do it and I have to agree with him that it's -- it's my usual course, so I'm going to stick with it. All right. So here's what I recommend.

Ask Mary at some point to give you a set of proposed findings and rulings that someone else filed in another case. This is not to suggest that you should ask her questions about it. She is an adjunct of me, all right? So I can't answer your questions. She's not going to answer your questions, but I will, you know, out of the interest of having you see what that would look like, I will ask her to provide to you a sample, you know, of what it would look like.

MR. SMITH: Thank you.

THE COURT: All right. Now, how much time do you guys think you need to submit proposed findings and rulings?

MR. REGAN: Ten days, Your Honor.

THE COURT: Are you going to get a transcript to get them or you think you have enough in your notes?

MR. REGAN: I think I have enough in my notes, Your Honor. I don't intend to get a transcript.

THE COURT: All right. How about you?

MR. SMITH: That ten days sounds --

THE COURT: Sounds like enough?

MR. SMITH: Yeah, that's fine.

THE COURT: Is that good? Okay. All right. So you're not going to be able to get a transcript, but transcripts are expensive so --

MR. SMITH: Yes.

THE COURT: -- you're probably not going to want to do it anyway.

MR. SMITH: No, that's okay.

THE COURT: Well, you're going to do your best then to tell me what your -- I -- yes, okay. I'm going to give you two weeks. I'll tell you why, because Mary may not get you the sample until next week so -- all right?

MR. SMITH: We could use Google Esquire. I mean is there something we could --

MS. DIPIRO: Let's get two weeks.

MR. SMITH: Okay.

THE COURT: Take the two weeks.

MS. DIPIRO: Yes.

THE COURT: And don't use Google Esquire. I mean -- well, the reason is because what I -- what's --

MR. SMITH: Yeah, I understand.

THE COURT: -- typical here may not be what's typical a lot of other places. And so, you know, what she shows you may or may not be terribly typical of what I see but it's what some lawyer who comes to practice here in Massachusetts and particularly in the court, you know, knows that we like to see.

Okay. Let me go at it this way then. Give you 14 days, two weeks from today. Mary, what's that, March --

THE CLERK: Eleventh.

THE COURT: March 11th, all right. So Friday, March 11th, I'll ask that you file those by 4:30 p.m. I will review them and if I feel I would like to hear you argue this to give me a summation, I'll have you back in, all right? I don't think that's going to be terribly helpful to me now until I see what you all think is, you know -- what you think the evidence has shown, okay? Unless you tell me that you really want to have an argument, I don't get in the way of that.

MR. REGAN: Your Honor, we want to have an argument.

THE COURT: You want to?

MR. REGAN: Really.

THE COURT: You want the whole soup to nuts. Okay.

All right.

MR. REGAN: Bad?

THE COURT: So I still would -- so I'm going to have you back in, all right, because any party that wants to do it I'm going to give them the right to do it.

MR. REGAN: Just so we're square, that was a poor attempt at facetious.

THE COURT: Oh, oh, oh.

MR. REGAN: Not a formal request for oral argument.

THE COURT: Oh.

MR. REGAN: I leave it --

THE COURT: I'm sorry. The --

MR. REGAN: I leave that -- my humor is sometimes poor, so excuse me.

(Laughter.)

THE COURT: Do you know what I mean by to come in and do a closing argument?

MR. SMITH: I mean I do from what I've seen on TV. I mean I --

THE COURT: Yeah.

MR. SMITH: -- so no, I guess.

THE COURT: So it's just where you come -- come in and tell me, you know, why it is -- typically it would look something like this. You would remind me of what the counts that you're proceeding under.

So that means the -- the legal theory that you have, you know, that Mr. Anketell should be denied his discharge as to your claims under 523(a)(2)(A) and (a)(6) because and --

MR. SMITH: Right.

THE COURT: -- you tell me what facts you think have been proven, either in the -- these documents that are now in evidence or in what was said in the courtroom that support that. Sort of you pulling it together for --

MR. SMITH: Right.

THE COURT: -- for me and saying please enter a judgment in my favor. So I'm going to give you time for an argument. What the heck? You spent a lot of time on this and I'll give you that.

MR. SMITH: Thank you.

THE COURT: All right, Mary, let's look for it.

So that's two weeks from today we're going to get the proposed findings and rulings. I will read them over and have you back in. You probably only need about tops I'd say a half-hour each, you know, to do that so I'll schedule it for about an hour.

(Pause)

Wednesday, March 16, 2:00 p.m.

MR. REGAN: And that's for argument, Your Honor?

THE COURT: It's for argument.

MR. REGAN: March the 16th. I'll write it down.

Thank you.

THE COURT: Does it work?

MR. REGAN: I'll make it work. Yes.

THE COURT: Does that work for you?

MS. DIPIRO: Your Honor, it's tough for me to say. I'm having ankle surgery and it is either the 17th or the 18th. So if I can check my phone, I could probably tell you that and --

THE COURT: Oh, check your phone.

MS. DIPIRO: -- very quickly. Do you want me to do that now?

THE COURT: Yeah.

MS. DIPIRO: Okay. Great.

MR. REGAN: Is this a morning session, Your Honor or --

THE COURT: 2:00.

MR. REGAN: -- afternoon?

THE COURT: 2:00 p.m.

MR. REGAN: 2:00 p.m. Thank you.

THE COURT: But, Ms. DiPiro, it's the 16th. Oh, okay. Go ahead and check then. If you think it could be the 16th, go ahead and check.

(Pause)

MS. DIPIRO: Just waiting for it to come on.

THE COURT: Sure.

(Pause)

MS. DIPIRO: My surgery is the 18th. The 16th would work.

THE COURT: All right. So let's do it on the 16th at 2:00 p.m., all right? And I'll look forward to seeing your materials submitted on the prior Friday and thank you very much.

MR. REGAN: Thank you, Your Honor.

THE COURT: Okay.

MS. DIPIRO: Thank you.

MR. SMITH: Were we going to do the PayPal --

MS. DIPIRO: Are we going to do the PayPal case as well?

THE COURT: Oh, goodness.

MS. DIPIRO: Sorry.

THE COURT: Goodness, goodness, goodness.

MS. DIPIRO: Like to leave but --

THE COURT: No, thank you for reminding me.

MS. DIPIRO: No problem.

THE COURT: All right. Is there any evidence that you would like to adduce from anybody about -- about the PayPal case that you haven't adduced in the course of this trial?

MR. REGAN: No, Your Honor.

THE COURT: All right. So you're resting on that case with the evidence that you have previously adduced, which

I will allow you to use in support of your PayPal case

MR. REGAN: That is correct, Your Honor.

THE COURT: Okay. Mary, did you hear that? All right.

So what Mr. Regan says is that he is prepared to rest on the evidence that he adduced or that was adduced by either side at the trial that just occurred and I have said that I'll allow him to use evidence from that trial in connection with the PayPal case. Then the question is, do you wish to testify about anything different? You know, are you prepared to rest on the evidence that was adduced at the trial of the 523 action?

MS. DIPIRO: I'd like to introduce some exhibits please and I can explain them.

THE COURT: All right. So you're going to need to -- you're going to need to take the stand to do that.

MR. SMITH: Yes.

THE COURT: And that's fine.

MR. SMITH: Yep.

THE COURT: Okay. So come on up.

MR. SMITH: Okay.

THE COURT: All right. I'd feel better if Mary put you under oath again. It's a new case, so --

THERESA DIPIRO, SWORN

THE COURT: All right. Now, Mary, if you would please, could you call -- just call this case so that -- again, so that we're -- it's the PayPal.

So Mary's going to call the case now.

THE CLERK: This is case Adversary Proceeding 15-1117. This is Anketell versus Smith, *et. al*. And it is day two of trial. Will the parties please state their names for the record?

THE WITNESS: Theresa DiPiro, defendant *pro se*.

MR. SMITH: Timothy Smith, *pro se* defendant.

THE COURT: All right. And I'll note for the record that Mr. Regan is here and his client is here. He's made an appearance. All right. I will also note for the record that I have had a communication in the -- in open court just a few moments ago with Mr. Regan and he has affirmed to me that he is relying on the evidence that he -- that was adduced at the -- at the trial that just ended for support in his PayPal case, so in this adversary proceeding, and he has rested. I then offered -- inquired of the defendants about what they wish to do and they have asked to put on some evidence in that case. All right. And so that's what we're doing. I'll also note for the record that Ms. DiPiro -- is it DiPiro? Do I have that right?

THE WITNESS: DiPiro, yes.

THE COURT: DiPiro.

THE WITNESS: Thank you.

THE COURT: Has assumed the stand and that my courtroom deputy has sworn her and so she is under oath. And you recognize you're under oath?

THE WITNESS: Yes, I do, Your Honor.

DIRECT EXAMINATION

BY THE COURT:

Q. All right. Go ahead then.

A. The two payments that were in question were paid for on March 20th. There was a payment of $6,232 on our credit card. It's a FIA credit card. There was a second payment on March 25th and that was for $11,130. Our project stopped on April 3rd, 2015. The plaintiff -- I mean Mr. Anketell filed for bankruptcy on April 8th, 2015. My husband and I called the FIA credit card company. My husband actually made the call on April 3rd, 2015 to get a refund because we -- from our credit card company. If you turn to Exhibit BB, B as in boy, B as in boy, there's a letter -- is everybody there?

Q. No, I'm not.

A. Okay. BB towards the end.

Q. All right. I'm there now.

A. Great. Thank you. There was a letter from FIA Card Services dated April 4th, 2015 to my husband noting the recent inquiry --

MR. REGAN: Your Honor, I'm objecting to the exhibit as unlimited (phonetic) hearsay.

THE COURT: All right.

THE WITNESS: My husband could testify to that, I guess.

BY THE COURT:

Q. Well, hold on. What is this document?

A. It's a letter from our credit card company stating that we inquired about getting --

Q. Well, whatever it is, it's a letter that -- it's a one-page letter from --

A. Our credit card company.

Q. Are you a joint --

A. We're -- yes --

Q. -- account --

A. -- we're joint --

Q. -- holder on that?

A. Yes, I am.

Q. Okay.

A. And they said --

Q. Well, wait. Wait.

A. I'm sorry.

Q. Just wait.

(Extended pause)

All right. Ma'am, let me ask you this. Why is it that you want to offer this letter?

A. Because it was what we received, me and my husband, because it was a joint account, that stated that they were researching our dispute for the $17,000 we paid on our credit card.

THE COURT: Okay. So why is this not just for notice then?

MR. REGAN: It's hearsay, Your Honor.

THE COURT: I know that, but notice -- hearsay is -- would be then that it's not offered to prove the truth of the matter asserted. It's proved -- it's being offered, as she just said I think, it's being offered to prove notification of her.

MR. REGAN: I would suggest it's being offered for the truth of a statement to the effect that they took an action, made a complaint on a particular day, not that they'd received notice from a credit card company. This is an effort, I'd suggest, to establish a time frame during which the complaint was made. So I --

THE COURT: So you say the communication from the Smiths to the credit card company is --

MR. REGAN: That --

THE COURT: -- hearsay?

MR. REGAN: That is what I --

THE COURT: Well, that might be but --

MR. REGAN: That's what this appears to be and I --

THE COURT: No, no, this doesn't appear to be that.

This appears to be a communication from FIA Card Services to them notifying them that they're doing an investigation. That's all. Why is that --

MR. REGAN: All I could say, Your Honor, it -- it appears to me that this is being offered for the purpose of establishing a time frame during which these communications occurred.

THE COURT: And that isn't -- that -- okay. That even more --

MR. REGAN: That's --

THE COURT: That even more persuades me that it's not offered for hearsay purpose. It's time frame. All right. Overruled.

MR. REGAN: Thank you, Your Honor.

THE COURT: I'll admit it, okay?

Defendant's Exhibit #BB Marked and Admitted Into Evidence

MR. SMITH: Thank you, Your Honor.

THE COURT: All right. So go ahead.

BY THE COURT:

Q. So this is being offered to show me that on or about April 4, 2015 the FIA Card Services told you that they were investigating your account?

A. Yeah, disputes on --

Q. Your inquiry.

A. -- those charges.

Q. Your inquiry is what it says. Okay.

A. Correct.

Q. All right. Go ahead. Tell me more.

A. On April 8th -- we received a letter dated April 8th, that's me and my husband, from FIA Card Services stating that we were actually issued the credit for $11,130 and $6,232 of the disputed charges. I'd like to admit Exhibit CC into evidence.

THE COURT: All right. Objection?

MR. REGAN: I'd have the same objection and I --

THE COURT: Same. Yeah.

MR. REGAN: -- anticipate the same ruling. Yes, Your Honor.

THE COURT: Indeed. Okay. I'll admit it for the same purpose -- limited purpose of establishing notice.

Defendant's Exhibit #CC Marked and Admitted Into Evidence

THE WITNESS: Thank you, Your Honor. The next exhibit is Exhibit DD.

THE COURT: Yes?

THE WITNESS: That is a copy of my husband and I's [*sic*] credit card for -- credit card statement for the period of March 28th to April 2000 -- April 27th, 2015 noting we were given the credit on four -- April 8th, 2015.

THE COURT: All right. You're offering that.

Any objection?

MR. REGAN: Same.

THE COURT: All right. Overruled. It's admitted.

Defendant's Exhibit #DD Marked and Admitted Into Evidence

THE WITNESS: And Exhibit EE is a notice of the bankruptcy case filing that --

THE COURT: All right. I'll take -- to save you the trouble --

THE WITNESS: Yes.

THE COURT: I'll take judicial notice of my own record in this bankruptcy case that this case was filed -- this bankruptcy case of Mr. Damian Anketell was filed on April 8th, 2015, so that's established.

THE WITNESS: At 5:47.

THE COURT: At 5:47. I'll even take notice of that.

THE WITNESS: Thank you.

THE COURT: Okay. Anything else?

THE WITNESS: That's all, Your Honor.

THE COURT: All right. Thank you. Hold on. Any cross?

MR. REGAN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. REGAN:

Q. Page 2 of Exhibit CC, please. It -- it is a section that says "What you need to do. It's important that we receive certain information," et cetera. After you receive this letter, did you do anything further?

A. We did what they asked us to do, yes.

Q. What did you do?

A. I don't recall the details but whatever they sent us, we returned it.

Q. By the way, do you know when you received this letter, when it came to your attention?

A. I don't. I don't recall.

Q. Well, it appears to have been mailed on April the 8th. Do you know if you received it on April the 8th?

A. I don't recall.

Q. Did you have any other communication with FIA Cards subsequent to the phone call that you put in?

A. I don't recall.

MR. REGAN: No further questions, Your Honor.

THE COURT: Okay. All right. Anything else from you?

THE WITNESS: That would be all.

THE COURT: All right. Thank you very much.

(Witness excused.)

THE COURT: All right. Any other evidence from your side?

MR. SMITH: Does that include testimony, Your Honor, or just -- I'm sorry -- as evidence?

THE COURT: Anything at all.

MR. SMITH: Anything. Okay. Just one second.

(Pause)

If I could just briefly --

THE COURT: Come up.

MR. SMITH: Okay.

THE COURT: You can do it. She'll do it.

TIMOTHY SMITH, SWORN

THE COURT: All right.

THE WITNESS: Okay.

THE COURT: All right.

EXAMINATION

BY THE COURT:

Q. Just identify yourself.

A. Sure. Tim Smith, *pro se* defendant --

Q. Okay.

A. -- in this proceeding. I just wanted to add a little color to the documents because I made the call. I probably should have come up here, but the 4th was the day that we made the call. And I think that's what this confirms basically that -- that I made the call asking for the -- for the charge-back at that time.

Q. Okay.

A. And I think that's important because that was --

Q. No, don't argument. Just tell me.

A. Okay. That was pre-petition.

Q. Just tell me factually, all right?
A. That was pre-petition.
Q. I know that, though.
A. Oh.
Q. I can figure all that out, so I just need you to tell me facts.
A. Okay.
Q. Not why you think they matter.
A. I apologize.
Q. That's all right.
A. And the second letter, despite when it was received, confirms -- when the actual letter was received by us confirms that payment was received prior to the filing as well.
Q. All right. So that's --
A. That's all.
THE COURT: All right. Hold on. Don't go anywhere. Any questions?
MR. REGAN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. REGAN:

Q. Mr. Smith, pretty much the same questions that I asked Ms. DiPiro. You made a phone call, your testimony is, on April the 4th, right?
A. To the best of my knowledge, yes.
Q. Okay. After making that phone call did you take

any -- have any -- initiate any further communications yourself or simply at some point received the two letters that we're looking at?

A. I don't believe so. It's possible we asked --

Q. Do you recall any?

A. -- for a confirmation letter.

Q. Do you recall any further communications which you or Ms. DiPiro initiated?

THE COURT: Don't speculate. Just answer the question.

THE WITNESS: Initiated with who?

BY MR. REGAN:

Q. Any person concerning your complaint regarding the credit card?

A. I don't recall.

MR. REGAN: Thank you, sir.

No further, Your Honor.

THE COURT: Okay. Anything else?

THE WITNESS: No, thank you.

THE COURT: All right. So that'll end that matter.

(Witness excused.)

THE COURT: All right? I mean I'll take that under advisement and I'll issue a ruling on it, okay?

MR. SMITH: Thank you.

MR. REGAN: Should that also be the subject of requests for findings and rulings?

THE COURT: No. I think I can handle it without that. I don't need them. I really don't.

MR. REGAN: Thank you, Your Honor.

THE COURT: Okay? Thanks everyone.

MS. DIPIRO: Is the judgment for that -- I'm sorry, Your Honor. Is that coming the same day that we do the closing arguments or --

THE COURT: It may or it may not.

MS. DIPIRO: Okay.

THE COURT: I'm not asking for proposed findings and rulings. I'm not even asking for closing arguments.

MS. DIPIRO: Okay. Yes.

THE COURT: All right?

MS. DIPIRO: Thank you.

THE COURT: It's a simple enough case that I think I can get through it, okay?

MS. DIPIRO: That's fine. Thank you.

THE COURT: Thanks very much.

MR. REGAN: Thank you, Your Honor.

MR. ANKETELL: Thank you, Your Honor.

(End at 2:27 p.m.)

* * * * * * * *

I certify that the foregoing is a true and accurate transcript from the digitally sound-recorded record of the proceedings.

3/3/2016

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Certified Transcriber
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